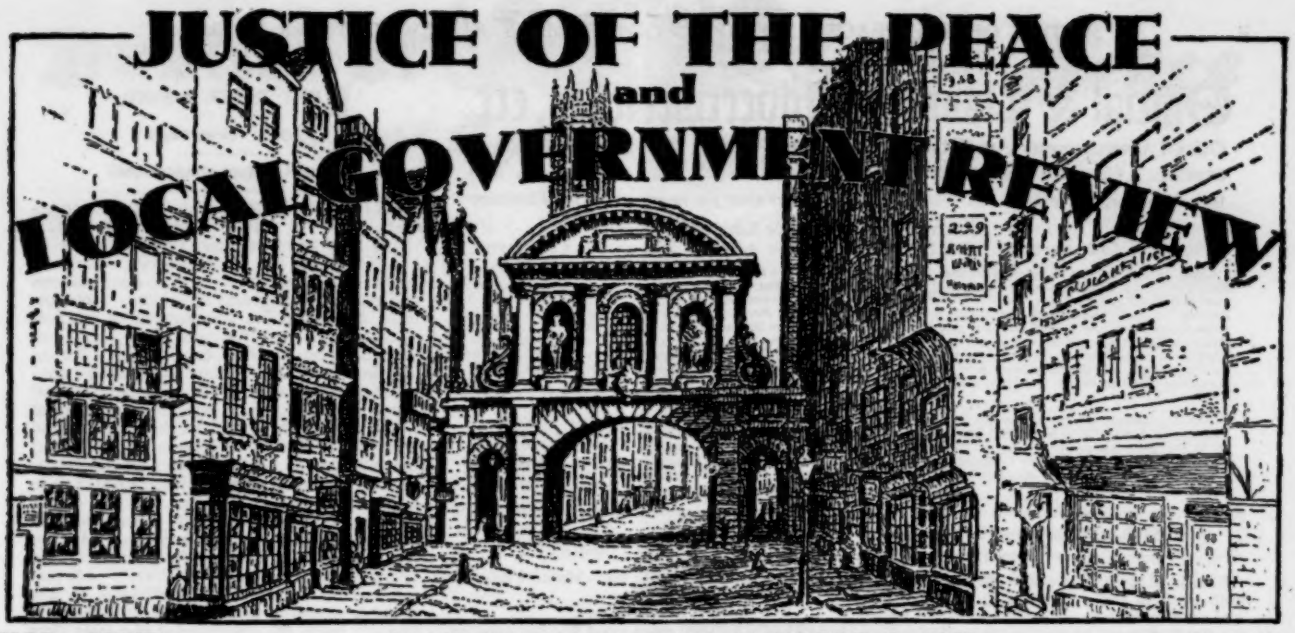

VOL. CXVII LONDON : SATURDAY, OCTOBER 3, 1953 No. 40

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Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.)

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NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note :* Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

SITUATIONS VACANT

APPLICATIONS invited from men familiar with work of Petty Sessions, Quarter Sessions and Assize Courts. Good shorthand-typing required. Salary according to qualifications and experience, but will not exceed £515 a year. Applications, in own handwriting, should state particulars of age, education, qualifications and experience and give the names and addresses of three referees, and be sent as soon as possible to County Clerk, County Hall, Chelmsford.

INQUIRIES

YORKSHIRE DETECTIVE BUREAU (T. E. Hoyland, Ex-Detective Sergeant). Member of The Association of British Detectives, World Secret Service Association and Associated American Detective Agencies. DIVORCE — OBSERVATIONS — ENQUIRIES—Civil and Criminal investigations anywhere. Over 1,000 Agents. Over 27 years C.I.D. and Private Detective Experience at your Service. Empire House, 10, Piccadilly, Bradford. Tel. 25129. (After office hours, 26823.) Established 1945.

PARKINSON & CO., East Boldon, Co. Durham. Private and Commercial Investigators. Instructions accepted from Solicitors only. Tel. : Boldon 7301. Available day and night.

MIDLANDS ELECTRICITY BOARD

Law Clerk

APPLICATIONS are invited for the appointment of Senior Assistant (Legal) in the Secretary's Department at Board Headquarters.

Salary £640/£700 per annum (N.J.C. Grade 5) ; superannuable.

Applicants should have had experience of conveyancing and general legal work. Knowledge of common law and of the Electricity Supply Industry and/or Local Government work will be an advantage.

Applications, stating age, education and full details of experience, should be sent within 14 days to Secretary (Ref. FWC) Midlands Electricity Board, Mucklow Hill, Halesowen, Nr. Birmingham.

A. STEPHENS,
Secretary.

CITY OF BIRMINGHAM

Appointment of Full-time Male Probation Officer

APPLICATIONS are invited for the appointment of a Full-time Male Probation Officer for the City of Birmingham.

The appointment and salary will be in accordance with the Probation Rules, 1949 to 1952. Candidates must not be less than 23 years nor more than 40 years of age, except in the case of a serving officer.

The post is superannuable and the selected candidate will be required to pass a medical examination.

Applications (in own hand writing), giving age, present position, general qualifications and experience, should be sent with copies of two recent testimonials to the undersigned not later than fourteen days after the publication of this notice.

T. M. ELIAS,
Secretary to the
Probations Committee.

Victoria Law Courts,
Birmingham, 4.

SURREY MAGISTRATES' COURTS COMMITTEE

CHERTSEY PETTY SESSIONAL DIVISION

Appointment of Assistant Clerk

APPLICATIONS are invited for the appointment of a whole-time Assistant to the Clerk to the Justices in the Chertsey Petty Sessional Division. Applicants must have a thorough knowledge of the work of a Justices' Clerk's Office and be capable of taking the Court when required. Competency in typewriting would be an advantage.

The present salary is £595×£15/20—£645 but is under review.

The appointment is superannuable and the person appointed may be required to pass a medical examination.

Applications, stating age, qualifications and experience, together with the names of two referees, must reach the undersigned not later than October 15, 1953.

E. GRAHAM,
Clerk of the Committee.

County Hall,
Kingston-upon-Thames.

KENT RIVER BOARD

Clerk's Department

Legal Assistant (Unadmitted)

APPLICATIONS are invited for this appointment on salary scale Administrative, Professional and Technical Division Grades Va to VII (£625 to £785 p.a.); starting salary to be fixed having regard to age, qualifications and experience of person appointed. Appointment superannuable and subject to medical examination and National Conditions of Service. Post newly established. Person appointed will be required to undertake conveyancing and allied work with only general supervision and should have some experience of County and Magisterial Court practice and procedure. Previous experience in Local Government or similar service an advantage but not essential. Applications must (1) be in applicant's own handwriting ; (2) give details of age, qualifications and experience and present and previous appointments ; (3) contain names and addresses of two referees as to character and ability ; (4) state whether applicant is to his knowledge related to any member or senior officer of the River Board ; and (5) reach the undersigned not later than October 31, 1953. Canvassing in any form will disqualify.

A. G. STIRK,
Clerk of the Board.

River Board House,
London Road,
Maidstone,
Kent.
September 23, 1953.

BERKSHIRE

Appointment of Chief Constable

APPLICATIONS are invited from duly qualified persons for the appointment of Chief Constable of Berkshire.

Salary £1,720 per annum rising by annual increments of £60 to £1,900 per annum, together with travelling, house and uniform allowances.

Conditions of appointment and form of application can be obtained from the undersigned on receipt of stamped, addressed foolscap envelope.

Closing date : October 31, 1953.

Applicants must be under 40 years of age, unless they have had previous service in a police force or are otherwise entitled to reckon previous service as approved service for purposes of pension.

E. R. DAVIES,
Clerk of the Standing
Joint Committee.

Shire Hall,
Reading.
October 2, 1953.

URBAN DISTRICT COUNCIL OF ESTON

ASSISTANT SOLICITOR required for Clerk's Department, Grade A.P.T. Va-VII (£625 to £785). Further particulars from the Clerk of the Council, Council Offices, Grangetown-on-Tees, Middlesbrough, to whom applications must be returned by October 17, 1953.

T. MYRDDIN BAKER,
Clerk of the Council.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

VOL. CXVII. No. 40 LONDON: SATURDAY, OCTOBER 3, 1953 Price 2s. 3d. (including Reports) Price 1s. 3d. (without Reports)

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NOTES of the WEEK

Capital Punishment

The Royal Commission on Capital Punishment, which was appointed in May, 1949, has issued its Report after more than four years of close study and careful investigation. It is important to remember that its terms of reference did not include any question as to the abolition of the death penalty. They did, however, include a number of important questions about possible amendments of the law relating to capital offences. A number of changes are in fact recommended, some of which are bound to prove controversial. The members of the Royal Commission did not arrive at unanimity on all points.

The conception of "malice aforethought" as an ingredient of murder has often been criticized, and its interpretation has been modified in recent times. This is one of the matters upon which an amendment of the law itself is recommended.

The question of immunity from the death penalty in the case of women and young men is dealt with in the Report. Most people will agree that there is no justification for exempting women, in cases of cold blooded murder, on the ground of sex alone. Public opinion, like that of the Royal Commission, will be divided about the exemption of young men, many of whom are unfortunately among the most dangerous criminals at the present time. The idea that the survivor of a suicide pact must always be held guilty of murder strikes ordinary people as artificial and strained, and they also find it difficult to regard what is popularly described as "mercy killing" as murder. These matters were also considered by the Royal Commission, but they have not felt able to recommend that there should be different degrees of murder recognized by law.

The suggestion that the jury should have a voice in the sentence, by being given power to find extenuating circumstances so that the death penalty would not follow, is likely to give rise to considerable discussion and is obviously fraught with difficulties. Criticism has indeed already been forthcoming. Another important matter which the Royal Commission has considered is the amendment of the M'Naghten Rules as to the defence of insanity, an amendment which many people think long overdue.

The Report, which occupies 500 pages, is of so much importance and covers so many topics, that we intend to deal with some of them in separate articles. It can be obtained from H.M. Stationery Office, price 12*s.* 6*d.*

Street Betting and Loitering

Various statutes and byelaws create offences of which loitering is an ingredient, and in consequence it sometimes becomes necessary for magistrates to consider what that word means in its particular context. Suspected persons are charged with loitering with intent to commit felony, but as in such cases any dispute about the facts is much more likely to be about the intent to commit felony than about the question of loitering, the word loitering does not receive much attention in argument.

Another statute in point is the Street Betting Act, 1906. Recently the learned stipendiary magistrate at West Ham had occasion to deal with a case under the Act, and gave careful consideration to the meaning of "loitering."

A woman was charged with loitering for the purpose of betting in a street. She pleaded Not Guilty. At the conclusion of the evidence for the prosecution it was submitted on her behalf that there was no case to answer.

Giving his considered decision, the magistrate said two police officers saw the defendant on two occasions on the day in question.

The first occasion was about 1.15 *p.m.* The officers saw her go into a house. She had a purse and a large white envelope. She came out of the house in a few moments and was walking in a normal manner. One of the officers went up to her and said, "I think you have been loitering for the purpose of betting." The defendant replied, "Well, you can take me now if you like. I have only got this envelope." The officer told her to be careful, and she went off.

The second occasion was about 6.35 *p.m.* about 190 yards from where she was previously seen. The defendant was walking at a normal speed across a bombed site when she was stopped by a man. He gave her a piece of paper, and she unfolded it and took from it a silver coin and put it in her purse. She only stopped momentarily. She then walked off very quickly and tucked the piece of paper in a large white envelope. She turned into the doorway of a house near by. She remained inside the house a few moments and came out carrying a large white envelope. As she came out of the house she walked into the centre of the road very quickly, saying in a loud voice, "You are not touching this property. It's going in the post." She was arrested for loitering for the purpose of betting. The envelope was addressed to a betting agent and was found to contain sixteen betting slips. The magistrate observed that there appeared to be no English decision on the meaning of the word "loiter." Among the meanings ascribed to the word in *Murray's Dictionary* were "To linger indolently on the way when sent on an errand or when making a journey; to travel or proceed indolently and with frequent pauses." In the Scottish case of *Williamson* v. *Wright* (1924) J.C. 57, Lord Anderson adopted the latter meaning, that is to say, that loitering was just travelling indolently and with frequent pauses.

Counsel for the prosecution had submitted that the mere fact that the defendant stopped momentarily on one occasion was enough to establish loitering.

The magistrate said he did not take that view. The defendant stopped momentarily because she was stopped by a man.

On the evidence before him he was of opinion that there was no case to answer. He accordingly discharged the defendant and awarded her £5 5*s.* 0*d.* costs.

According to 15 *Halsbury* 507, what was decided in *Williamson* v. *Wright*, *supra*, was that a motor-car which slows down to receive betting papers is not "loitering." The supplement (1953) adds: "but the vehicle may be frequenting the street; *see Cassidy* v. *Langmuir* [1935] S.C. (J.) 65." In *Bridge* v. *Campbell* (1947) W.N. 223, a case under the Vagrancy Act, it was held that there may be loitering by a person driving a motor vehicle.

Tampering with a Motor-Car

In a magistrates' court recently, during the hearing of a charge of assault, it was stated that a man who had parked his car found, on returning to it, that there were two boys in it. He held them by the arms, and then, it was alleged, the father of one came up saying "The kids have a right to play with it."

The father was wrong in more ways than one. If he had a car of his own, he would no doubt object like other people to children making free of his property with the possibility of doing some damage. Moreover, as to any right to play with the car, the provisions of s. 29 of the Road Traffic Act, 1930, are in point. This section makes it an offence to get on to a motor vehicle when it is on a road or on a parking place provided by a local authority, without lawful authority or reasonable cause, or to tamper with the brake or other part of the car's mechanism. It is therefore quite possible that the boys might have been summoned, and if they had been found guilty and fined the father might have had to pay.

Disqualification of Aider and Abettor

A milk roundsman who allowed a sixteen year old boy to drive an electrically propelled milk float for thirty-five yards was fined on each of two charges of aiding and abetting the boy, who was convicted of driving without a licence, and driving when not insured against third party risks. The roundsman was disqualified for holding a licence for twelve months.

The question of disqualification of aiders and abettors is one of some difficulty. We are not questioning the correctness of what was done in the present instance, but only calling attention again to the point of law involved. The court evidently took the view that since an aider and abettor is, in the words of s. 35 of the Magistrates' Courts Act, 1952, "guilty of the like offence" as the principal, he was guilty of using the vehicle when uninsured against third party risks, so that disqualification followed automatically on conviction. Where doubts on this point have arisen they have been due to the wording of s. 4 of the Road Traffic Act, 1930, which, it is sometimes suggested, seems to imply that an aider and abettor is not liable, in every kind of Road Traffic Act offence, to all the consequences that follow in the case of the conviction of the principal.

A Black List for Drunkards

There must be some old magistrates, clerks and police officers —and perhaps we might add some old drunkards—who remember when there was in this country a black list, as it was called, upon which were placed the names of habitual drunkards so that they might be prevented from obtaining alcoholic drink from licensed premises or clubs. This was provided for by s. 6 of the Licensing Act, 1902, under which a person convicted of an offence of drunkenness after certain previous convictions could be adjudged an habitual drunkard. One consequence was that he was liable to be sent to an inebriate reformatory for three years, but, whether such an order was made or not, the court could order that he should be prohibited from obtaining intoxicants from licensed or club premises for a period of three years. If he obtained or attempted to obtain them, he was liable to be fined, and the person supplying it was liable to much heavier penalties.

In order to implement the law, it was necessary for the police to be informed of all such orders, and the practice was for the habitual drunkard's photograph and personal description to be circulated to licensees in the district usually frequented by the offender. The scheme was not a success. The difficulty of putting it into effect in populous areas is obvious, and the determined drinker could usually circumvent the law, if only by transferring his custom to some locality at a distance from his former haunts. Moreover, it is easy to imagine the position of the publican and his staff at busy times. We have a rather vague recollection of a picture in *Punch* showing a chimney-sweep asking for a drink and the publican, black list in hand, declining to serve him until he had washed his face and made identification possible.

These memories have been stirred by the report of a case from the island of Sark. A man was arrested for being drunk and disorderly, and was fined for this offence and also for being under the influence of drink while on the island black list. It was stated that he had previously had his period on the list extended for being drunk while in charge of a horse and carriage.

Detention in Police Custody

In Sark, where apparently the Junior Constable is a major and the magistrate is a Seneschal, the lot of the prisoner awaiting his appearance before the court is very different from that of his English opposite number. It seems he is taken to a prison and left there, 1,300 yards away from where his gaoler lives. This prison claims to be the smallest in the world, and is described as measuring fifteen feet by ten, with no windows and only two port-holes in the roof. Neither light nor water is laid on. Whether the prisoner is visited during his stay is not stated in the newspaper account, and one can only assume that no prisoner would be left if there was any probability of illness. In England we take it for granted that all prisoners are visited periodically while in the custody of the police and that they have the means of communicating with their gaolers in case of illness or other emergency. However, as it is stated that there had not been a prisoner in the prison during the last five years, it is not so surprising that the prison contains only two cells and that there is nothing elaborate about it.

The Ministry of Pensions

The report of the Ministry of Pensions for the year ended March 31, 1953, is of special interest in view of the recent amalgamation of that Ministry with the Ministry of National Insurance. An important section of the report explains the work of the welfare service, which some critics feared might be affected by the new scheme. The service has been built up over a period of five years, and is an integral part of the work which has been done for war pensioners, not by the Ministry alone, but also by the war pensions committees and their associated voluntary workers, and by many voluntary organizations concerned with the welfare of the disabled and of war widows and dependants. The Government have given an assurance that this work will be continued. It is mentioned in the report that a most pleasing feature of the development of the welfare service has been the growth of team work between official and voluntary workers.

This linking of State and voluntary effort has proved of inestimable value by co-ordinating the various activities, and ensuring that they are deployed to the best advantage. Over 63,000 pensioners, including the war-disabled, widows and dependants, sought advice or assistance during the year, on a wide variety of problems, from the welfare officers at the local offices of the Ministry. In addition, some 15,000 were helped with problems while undergoing treatment in hospital, and a considerable number under the arrangements made for visiting the severely disabled in their homes. Out of a total of 948,000 pensioners over 668,000 are disabled pensioners and they constitute the majority of those seen by the welfare officers. Just under thirty *per cent.* of those interviewed were pensioners of the 1914/1918 war. It is the duty of the welfare officers to assist in finding employment for pensioners. This is achieved through the close co-operation which exists with the Ministry of Labour and National Service. It has been the policy of the welfare service to go out to help the pensioner whenever necessary, and about a quarter of the interviews take place at the pensioner's home or place of employment. The visiting of the severely disabled has been made possible through the willing service of members of war pensions committees and their teams of voluntary workers, who make most of the visits. The service of the voluntary workers is most useful in rural areas, where still more workers are required.

One of the most important of the facilities provided for the seriously disabled is the homecrafts service, which offers a wide choice of crafts or hobbies as a means of pleasant creative effort and personal expression. Over 6,000 pensioners are being helped in this way. The service relies mainly on the co-operation of voluntary organizations and funds who work in conjunction with the war pensions committees. There are some eighty homecraft centres where pensioners work in groups. Transport is provided if necessary by voluntary organizations and individuals who have an interest in the work.

The supervision of war orphans has always been one of the most important concerns of the Minister. There still remain some 6,000 under supervision, of whom about 3,500 who have lost both parents are living with relatives. There are about 500 who have no relatives able to give them a suitable home and are in the care of foster parents. Many of the children placed in foster homes have been adopted by their foster parents, but it has been the policy not to support an application for adoption unless the child has been settled in the family for a period of years, and it is clear that adoption is in accordance with the child's wishes and in his or her best interests.

Public Health in Glamorgan

It is satisfactory to learn from the annual report of the medical officer of health for Glamorgan that last year was marked by a continued improvement in the co-operation between the three main branches of the Health service, partly through the influence of the members of the Health Committee who are on management committees and the executive council, and also through the medical officer of health being co-opted on several of the hospital committees which are attended only when matters of mutual interest to the authority and hospital service are under consideration. The members of the local medical committees have been most co-operative and matters dealing more particularly with nursing services have been discussed, as for instance the relationship of the health visitors to the family doctors, the easing of the home nurses' duties by lessening the calls on her for the giving of injections, and also several points dealing with the work of the midwives. It is regretted, however, that as yet the general practitioner has been slow to make use of the help the health visitor can give in dealing with social problems arising in the home; while the hospital consultant tends to rely on the hospital almoner, resulting in an encroachment on the field of the health visitor. It is suggested in the report that if she is to become the adviser on health and other problems, as envisaged in the National Health Service Act, a greater appreciation of her worth in this field must be shown. Both the home nursing service and the home help service have continued to expand. The aged and chronic sick in particular derive great benefit from the care and attention given by the home help, who plays her part alongside the doctor, home nurse, and others in meeting the problems in the home associated with the ageing of the population. The home helps attended more aged and infirm persons than those in any other category. The next greatest number were the chronic sick. The provision of a service to meet all demands would be a costly proposition and the home help adviser is in constant touch with the divisional medical officers to ensure that the helps available are used to the maximum benefit of as many as possible, which is admitted to be no easy task. Some of the home helps make visits of their own volition in the evenings to make the old people comfortable for the night. Referring to maternity and child welfare, it is mentioned that some doubt has been cast on the continued need for clinics. It is accepted that the mothers of today are better educated on health matters and that they can obtain any treatment required through their own doctor, but many continue to avail themselves of the opportunities provided for periodic examination and advice. Approximately eight out of every ten mothers attended the ante-natal clinics in Glamorgan last year.

Pewsey Rural District Finances

Pewsey is a rural district in Wiltshire, and the council administers an area of 76,000 acres—just about twice the size of Leeds—and manages to do so with only twenty-two officials and four committee meetings a month. This information we have gleaned from the useful combined year book and abstract of accounts which the Clerk and Chief Financial Officer, Mr. F. H. M. Sargent, has prepared. The form of his publication is one which might usefully be adopted by other local authorities.

Pewsey's population totals 14,400 and its total rate for 1952/53 of 15*s.* 2*d.* produced a sum of £75,900. No less than £64,400 of this total, equal to a rate of 13*s.* 0*d.* was levied on behalf of the Wiltshire County Council. The rate levy for 1953/54 has been increased to 18*s.* 0*d.* due to almost equal rises in county and rural district requirements: even now, however, it shows an increase of just less than 50 *per cent.* over the figure of 12*s.* 4*d.* levied in 1930/31 and it seems obvious therefore that rates today in Pewsey must be less of a real burden than they were twenty-three years ago.

Most capital expenditure has been on housing (£754,000 out of £901,000) and the council own 730 houses of which 72 were completed during 1952/53. Although slightly smaller dwellings were built, average costs per house rose during the year. The Housing Repairs Fund balances was further increased during the twelve months to a total of £13,089, which is equivalent to just under £18 per house. Mr. Sargent warns, however, that the time is not far distant when the fund will have to be seriously depleted if the council wish to improve and modernize their older houses.

In spite of a grant of £1,338 from the Wiltshire County Council, the water undertaking incurred a deficiency of £1,837, which was met from the general rate fund.

The balance in hand was slightly reduced during the year but the financial position remains immensely strong, the closing balance of £22,700 being equivalent to almost twice the total rate levied on district account for the year.

Norfolk County Council Accounts, 1952/53

Mr. T. Clay, the Norfolk County Treasurer, has published his very useful booklet summarizing the financial transactions of the County Council for the year and including in addition informative statistical data. The layout is substantially the same as in previous years: we again commend Mr. Clay's practice of including in this booklet a summary of his revenue accounts and balance sheets, thus affording the opportunity of dispensing with a bulky abstract of accounts.

Those who may be unfamiliar with this pleasant part of East Anglia will quickly realize on glancing at the county map which Mr. Clay has had printed that Norfolk is a county truly rural, no less than 1,250,000 acres out of its total area of 1,303,000 acres being administered by rural districts, which, apart from certain aerodromes inhabited by foreigners from other parts of Britain and places beyond, are real country. The population is equal to ·29 per acre and it is interesting to speculate on what the rate level might be if the staple industry made a contribution towards the services provided. However, it does not do so and the actual rate precepted for the year was 14*s.* 0*d.* Quite contrary to most experience elsewhere this represented a reduction of 9*d.* as compared with 1951/52, but unfortunately total expenditure continued to rise, reaching a record total of £6,257,000 (education £2,963,000: roads £1,285,000), the result being that it was necessary to withdraw the equivalent of a 1*s.* 9*d.* rate from balances. At the close of the year, however, the revenue balances still totalled £548,000, of which £382,000 was represented by cash at bank; we hope the average figure for the twelve months was considerably less, otherwise the County Council bankers must indeed have been pleased.

The County Council has a considerable smallholdings estate exceeding 31,000 acres on which a loss of £4,700 was incurred during the year: this was met from the General Reserve Fund, leaving that Fund at March 31, 1953, with a balance in hand of £36,000.

An interesting table analyzes the county rateable value into constituent elements, and we note that dwellinghouses of not exceeding £10 rateable value make up twenty-eight *per cent.* of the total. Some of our urban friends are inclined to regard such figures as evidence of undervaluation, but a few days spent in one of these rural abodes would assuredly change their minds.

Because of its low rateable value per head of population £3 19*s.* 8*d.*), Norfolk receives a large equalization grant (£1,521,000), equal to a rate of 21*s.* 4*d.* It is due to lose the equivalent of a 7*d.* rate under the proposals of the Investigating Committee.

Capital expenditure for the year was £831,000 (Education £453,000) and the Treasurer draws attention to the increasing debt on services apart from smallholdings. It has increased from £589,000 at March 31, 1948, to £2,438,000 five years later.

CLAIMING TRIAL BY JURY

In the course of correspondence with a contributor it has emerged that doubts may exist about the exact meaning and effect of s. 25 of the Magistrates' Courts Act, 1952. This section takes the place of the old s. 17 of the Summary Jurisdiction Act, 1879. The point originally raised in the correspondence was the possibility of a defendant who had claimed to be tried by a jury on a charge under s. 15 of the Road Traffic Act, 1930, having the right before the end of the hearing to change his mind and ask to be tried summarily. The suggestion made to us was that the position may be different in the case of a " section 18 " case from that in a case which, apart from the provisions of s. 25, must be purely a summary one.

The position seems to us to be quite clear. Where a person is charged with a " section 18 " offence it has first to be decided, in accordance with the provisions of s. 18, whether the charge is, in the first instance, to be treated as a summary one or as an indictable one. This decision rests primarily with the court and the prosecutor. The latter can at that stage object to the case being started as a summary one, but if he suggests that summary trial is appropriate it is still open to the court to say that the case must be started as an indictable one. If, however, the court, on the suggestion of the prosecutor, is prepared to deal with the case as a summary one it has next to be considered whether the offence is one to which s. 25 applies. If it is, then the accused must, if he is present in person, be informed of his right to claim to be tried by a jury and be told where he would be tried if he so claimed, and what is meant by being tried summarily. This must be done before the defendant is asked to plead to the charge, and if as a result he claims to be tried by a jury the provisions of s. 25 (6) take effect and the court must " thereupon deal with the information in all respects as if it were for an offence punishable on conviction as indictment only; and the offence, whether or not indictable otherwise than by virtue of any such claim, shall as respects the accused be deemed to be an indictable offence."

Thus if a " section 18 " case is, by virtue of s. 18 (1), treated by the court in the first instance as a summary offence the position is exactly the same as if the offence were a purely summary one. In either event, if the punishment which can be awarded on summary conviction exceeds three months and the offence is not an assault or one under s. 1 of the Vagrancy Act, 1898, the court cannot proceed with the hearing without complying with the provisions of s. 25.

Returning to s. 18, we must consider now the position when the court, having heard the views of the prosecutor, proceeds with the case as if the offence were an indictable one. The first possibility is that the decision so to proceed holds good, and the case is dealt with throughout as one being heard by examining justices. In that event the defendant will either be committed for trial at the appropriate court, or discharged under s. 7 of the Magistrates' Courts Act, 1952. In this case the question of his claiming trial by jury, by virtue of s. 25, does not arise. The second possibility is that the magistrates may decide to proceed, under s. 18 (3), to try the case summarily. This involves, in any event, their considering any representations made by the prosecutor and by the defendant, but if the charge is one to which, as a summary offence, s. 25 applies the court must have regard also to s. 25. Here a further complication is introduced. Not only must the accused be told, before being asked to plead to the charge as a summary one, of his right to claim to be tried by a jury but also he must be warned (*see* s. 25 (5)) of his liability, if convicted on summary trial, to be committed for sentence under s. 29 of the Act if his character and antecedents are such as to justify such a committal. The accused then makes his decision, and, if he claims to be tried by a jury, s. 25 (6) becomes operative. From that moment the offence is treated as an indictable one by virtue of that subsection, and not because it was started as such by virtue of s. 18 (1).

Dealing again with s. 18 there is one further point which should be mentioned. If a court has begun to try a " section 18 " case as a summary one (which implies, if it is also a s. 25 case, that the defendant has not claimed to be tried by a jury) the court may at

any time before the conclusion of the evidence for the prosecution, discontinue summary trial and proceed to inquire into the information as examining justices. There is no requirement in s. 18 (5), which gives the court this power, that they shall consider any representations by either party before so discontinuing the summary trial. The subsection appears to be intended to meet the case where the court is satisfied by the evidence it hears that had it appreciated the circumstances thus disclosed it would not have thought the case one which it was appropriate for it to try summarily. A decision made under s. 18 (5) to proceed to inquire into the information as examining justices is irrevocable, because s. 18 (3) applies only where that procedure was adopted under s. 18 (1).

To return to s. 25 and to sum up the position under that section it will be seen that, no matter in which of the possible sets of circumstances a defendant claims trial by jury because of his right to do so under s. 25, the provisions of s. 25 (6) thereafter become operative. In our opinion, on the wording of that section, it is clear that a decision by a defendant to claim trial by jury is irrevocable. We say this because an offence which is an indictable offence can be tried summarily only by virtue of s. 18, 19, 20 or 21 of the Magistrates' Courts Act, 1952. An offence which by virtue of a claim under s. 25 has become one which the court must deal with in all respects as if it were an offence punishable on conviction or indictment only cannot, we submit, be brought within the provisions of ss. 18 to 21 and cannot be dealt with other than as an indictable offence.

COMMON STATUTE LAW

By PAUL T. W. BUTTERS, *Solicitor*

Speaking generally, the laws of this country may be said to derive largely from two sources, the Common Law and Statute Law ; and if there is any doubt as to the accuracy of this sweeping generalization, of one thing there can be no doubt whatsoever —both branches are equally difficult, and at times quite impossible, to understand.

If you are foolish enough to let him, any lawyer will tell you at great length and with considerable obscurity, the differences between Statute and Common Law. He will explain with the irritating complacency of the expert that the former is embodied in a bewildering array of Acts of Parliament, while the latter is to be found (if you look long enough and have learnt the code) in The Law Reports. What he will probably omit to point out to you is the one fatal characteristic they have in common—namely, the fact that they were both devised by mortal, well-meaning, but fat-headed man.

It is a sobering thought that if Her Majesty's Judges had been content to listen quietly to the evidence, and then deliver judgment merely by stating which side had won, there might have been no Common Law at all. But, of course, there was never any real danger (or hope, according to the point of view) of that. Even a poor lawyer (if there is such an animal) can put up a pretty good show when it comes to explaining how wrong you are and how right he is ; but when the lawyer happens to be a good one (as all High Court Judges are presumed to be) there is no stopping him. So, not only does he tell you what his decision is, but he goes on to explain in English that is sometimes as obscure as it is beautiful, why he came to the decision he did and furthermore why, of necessity, he must be right. And, even when you are on the losing side, his reasons nearly always sound convincing—almost as convincing, indeed, as those of the Court of Appeal when they reverse his Judgment. All of which is apt to be confusing to a simple-minded layman, and if he happens to be a cynic as well he may be tempted to think that the only reason we have a Common Law is because mortal man has always liked to hear himself talk, even when he hasn't really had anything to say ; but that would be a churlish view to take of a practice which demands not only a considerable knowledge of the law but a great deal of hard work as well. And there *is* always the Court of Appeal and, beyond even that august body, the Olympian, astronomically expensive heights of the House of Lords, who naturally have it all their own way since nobody can answer back.

Anyway, whether you like it or not, these learned men have gradually built up the Common Law of the land as we know it today and, if you want to find out how they did it, you have only to look up what the reported cases have to say about your particular problem. Of course, that isn't quite as easy as it sounds even today, but a couple of hundred years ago it was very nearly impossible, for the Law Reporters guarded their secrets with a jealous care in those days. Modest, retiring men, they would go to great trouble to report every syllable of a case, then stow it away in the archives and protect it with a code so impossibly difficult that we are driven to the conclusion that the one thing they feared was that some inquisitive lawyer might find it and read it. Take, for instance, the reference to the famous " Taltarums Case." Here it is :

" Y.B. 12 Edw. IV. Mich. pl. 25."

There is a reference that makes *The Times* Crossword look like a Picture Puzzle for backward children. At first sight, one might be tempted to say that it would have baffled S. Holmes himself. Yet that distinguished sleuth would have told you in no time that all it means is that Taltarum's Case was heard in the Michaelmas Term (or Sitting of the Court) of the Twelfth year of the reign of King Edward IV (which was, of course, 1473), and was reported as Plea 25 of the Book of that Year. So all you have to do is to find the relevant Year Book, look up Plea 25 and you will find out what they thought about Taltarum's Case in 1473. And much good may it do you.

The catch lies in the fact that when you have spent the best years of your life in finding Taltarum's Case you almost certainly won't be able to read it if and when you get as far as blowing the dust off the covers. They were a cautious lot in the XVth Century : they wrote their Reports in Latin of an ancient vintage and it was not until 1730 (or thereabouts, as we lawyers say) that they realized how unsporting this was and resorted to their mother tongue.

Since the advent of the XIXth Century, of course, the mere finding of a case is simplicity itself. You are given directions a child of five could understand (if he had had some legal training). Such as :

Wotherspoon v. *Buttermarsh-in-the-Wold U.D.C.* (1898) 1 Q.B. 702, or

Goodfish v. *Muckraker's Trustees and Others* (1902) 26 L.J. Ch. 198.

Well, that's clear enough, surely ? You can lay your hands on those cases in a moment and then but one trifling difficulty remains. You have to understand them.

Statute Law as embodied in Acts of Parliament is a much more definite affair—or purports to be. It tells you what you have to do and what will happen to you if you don't. You

might like to hear an authoritative definition of an Act of Parliament. Here it is :

" An express and formal laying down of a rule or rules of conduct to be observed in the future by the persons to whom the Statute is expressly or by implication made applicable."

Statute Law, we are then informed from the same authoritative source—" can usually (except in rare cases) be expressed in a comparatively short and intelligible document."

Which isn't strictly true, for few Statutes are short and none intelligible. A more realistic and certainly a more accurate description of an average Act of Parliament might be expressed thus :

" A long-winded document of inordinate length, no punctuation, a bewildering succession of sections, subsections, and sections of subsections ; a mass of ambiguities and cross-references and an Interpretation Clause that makes its construction difficult, if not impossible."

They even used to try and make it harder still by using a code almost as obscure as the reference to Taltarum's Case. Instead, for instance, of calling the famous Statute of Uses by its proper name, they would insist on calling it " 27 Hen. VIII C. 10." But this infamous practice has now fallen into disuse, which is just as well in the interests of a lawyer's sanity and a layman's pocket.

In spite of their obvious obscurities, one thing can be said with certainty about Common Law and Statute Law. They have both begotten the same child—litigation. So perhaps there is, after all, something in the layman's plaint that the law was made by lawyers for lawyers. But, after all, a lawyer must live—in spite of what some people say.

CHANGES IN THE LOCAL GOVERNMENT SUPERANNUATION SCHEME—II

[CONTRIBUTED]

(Concluded from p. 543, ante)

ALLOCATION OF BENEFITS TO SPOUSE OR DEPENDANT

Under the Act of 1937, an employee who becomes entitled to a superannuation allowance and who is able to produce evidence of good health can surrender a limited part of his allowance in order to provide a pension for his spouse should he predecease her. The widow's pension thus provided is an annuity of an amount actuarially equivalent to the value of the part of the allowance surrendered after taking into account the respective ages of the employee and his spouse. The employee cannot surrender more than one-third of his allowance or a smaller amount than would secure for his widow a pension of less than one-quarter of the amount of the reduced allowance payable to him.

Under the Act of 1953, a contributory employee who transfers to the new scheme, as well as one who retains the benefits of the Act of 1937, will be enabled (by regulation) to surrender part of his allowance or benefit to secure a pension for his spouse or any other dependant without in fact retiring himself.

ADDED YEARS

A contributory employee who possesses such professional or special qualifications as may be prescribed will be enabled, with the consent of his employing authority and subject to payment of additional contributions and such other conditions as may be prescribed, to reckon additional years of service. This provision follows s. 7 of the Westminster City Council (Superannuation and Pensions) Act, 1909, and s. 59 of the Edinburgh Corporation Order, 1933.

When the Bill was being considered in the House of Lords an amendment was moved to this clause to extend the regulations to apply to an officer who has retired from the service of an employing authority and been re-engaged by them. The noble lord moving the amendment explained that its purpose was to extend the new scheme to contributory employees who retired from the service before September 30, 1950, in order to secure pensions for their spouses, but who, since retiring, have been employed in the local government service and continue to be so employed at the present time. The Government spokesman, resisting the amendment, argued that it was inappropriate to include such a provision in the clause in question, that there was no general demand for such a provision, and that it appeared to be designed to meet a particular case which ought to be dealt with in a private Bill. The amendment was eventually withdrawn.

CLERKS OF THE PEACE AND OF COUNTY COUNCILS

Section 9 of the Local Government (Clerks) Act, 1931, as amended by the Act of 1937, provides that every clerk of the peace and county council appointed before July 31, 1931, shall be entitled, on vacating his offices otherwise than in consequence of any offence of a fraudulent character or of grave misconduct, to a non-contributory superannuation allowance equal to one-sixtieth of his average remuneration during the preceding five years for every year of service as clerk of the peace and county council, or as deputy clerk, or in the permanent or indirect employ of a local authority. The Act of 1953 authorizes the making of regulations to provide for the granting of alternative benefits in the case of such a person in office at July 14, 1953, or who has held such an office since September 30, 1950, and to enable such an officer to allocate to his spouse or dependant part of the benefit to which he is entitled under the Act of 1931 or under the new regulations, as if he were a contributory employee under Part I of the Act of 1937.

In relation to clerks of county councils appointed after July 31, 1931, the Act of 1953 repeals the provisions of earlier legislation exempting the officer from liability to contribute to the superannuation fund if his service has been extended beyond the age of sixty-five years. This amendment is consequential upon the general provision enabling contributory employees to contribute up to a maximum of forty-five years.

In the House of Lords a motion was moved to insert a new clause in the Bill adding " a court of quarter sessions " and " a standing joint committee " to the list of local authorities specified in the Act of 1937 as authorities whose whole-time officers are to be compulsorily superannuable. The principle of the proposed new clause was agreed by the Working Party but, according to the noble lord who moved the motion, at the last moment, for some reason or other, the agreement broke down. The object of the amendment, he explained, was to ensure that where the offices of clerk of the peace and clerk of a county council are separated the staff employed by or to assist the clerk of the peace should be brought within the scope of the superannuation arrangements. Resisting the amendment, the Government

spokesman stated that there were only three or four cases where a separate county clerk of the peace has been provided, and in those cases the superannuation of the clerk and his staff has been provided for by local legislation. Her Majesty's Government, he said, did not expect this arrangement to become a usual one and considered it best not to legislate for potential arrangements which they did not wish to encourage. They suggested that if another case did arise in the future it should be dealt with by local legislation. The amendment was thereupon withdrawn.

JUSTICES' CLERKS AND THEIR STAFFS

The Act of 1953 repeals and re-enacts, with modifications, the existing provisions relating to the superannuation of justices clerks and their staffs (some of which only came into operation earlier this year) so as to enable such employees to contribute to superannuation funds providing widows' pension benefits.

Clerks and assistant clerks to justices were outside the scope of the Act of 1922, except in cases where they had been brought within the superannuation scheme under that Act by virtue of a local Act. Under the Act of 1937, however, all whole-time justices' clerks, including such persons holding one or more clerkships which together virtually amounted to whole-time employment, and the employees of such clerks who devoted substantially the whole of their time to assisting their employers in the discharge of functions appertaining to such clerkship(s), became contributory employees, on April 1, 1939, or when they took up their appointments (if after that date) unless, in the case of a clerk holding such appointment on April 1, 1939, he contracted out of the scheme. The provisions of the Act relating to the extension of service, increased allowances, gratuities, etc., were adapted to enable justices to exercise powers available in other cases to the employing authority, and to safeguard the position of the council paying the remuneration of the clerk.

In 1944 the Roche Committee recommended that a separate non-contributory scheme should be introduced for justices' clerks and their assistants similar to that applicable in the case of county court registrars and their staffs, but that if this was not possible then the local government superannuation scheme should be extended and applied to part-time clerks (as it had been applied to part-time local government officers) and whole-time assistants to such clerks. The first recommendation was not accepted by the Government but ss. 22 and 23 of the Justices of the Peace Act, 1949 (which came into operation on April 1, 1953) repealed s. 20 and Part III of sch. 2 to the Act of 1937 and made magistrates' courts committees "local authorities" for the purposes of Part I of the earlier Act, or local Act authorities in those cases where the council paying the remuneration of the clerk is such an authority.

The Act of 1949 also empowered the Secretary of State to specify the class of part-time justices' clerks the members of which should be superannuable and, by the Justices' Clerks (Part Time) Superannuation Order, 1952, such clerks who are in receipt of a salary of not less than £250 a year have been specified as contributory employees to the appropriate superannuation fund as from April 1, 1953.

Section 23 and Parts I and II of sch. 3 to the Act of 1953 will replace the provisions of the Act of 1949 summarized above as from a date to be specified by regulations made by the Minister. The Acts of 1937 and 1953 and the regulations which are to be made prescribing the benefits explained in the preceding article in this series will then apply to justices' clerks and any persons employed by a magistrates' courts committee to assist a justices' clerk (provided the employment is not casual) with the following adaptations or extensions :

(i) if they obtain the prior approval of the council paying his remuneration a magistrates' courts committee may determine that a part-time clerk shall become a contributory employee notwithstanding the fact that he is not of a class specified by the Secretary of State ;

(ii) the age of compulsory retirement of a justices' clerk will be seventy years or the age at which he completes the equivalent of forty-five years' contributing service provided that is not earlier than the date when he attains the age of sixty-five ;

(iii) the provisions may be applied retrospectively to April 1, 1953, when s. 19 of the Justices of the Peace Act, 1949, came into force.

A former justices' clerk or whole-time assistant to a justices' clerk who subsequently becomes a contributory employee in respect of some other employment will be able to reckon his previous service for superannuation purposes.

PROBATION OFFICERS

Section 23 (3) of, and sch. 4 to, the Act of 1953 enable the Minister by regulation to apply the provisions of the Acts of 1937 and 1953 and the new scheme of widows' pensions, etc., to probation officers and their staffs in lieu of the Probation Officers (Superannuation) Act, 1947.

GRATUITIES

A local authority are empowered by s. 18 of the new Act to grant a gratuity to any employee who ceases to be employed by them and who is not entitled to any payment out of the superannuation fund other than a return of contributions, or to the widow or any other dependant of an employee who dies while in their employment. The gratuity must not exceed an amount equal to twice the annual emoluments of the employment, and may be paid either as a lump sum, periodic payments, or an annuity.

If such a gratuity has been granted to an employee by way of periodic payments or an annuity and he dies before all the payments are completed, or before the amount paid equals the capital value of the annuity, the balance may be paid to his widow or any other dependant.

This provision replaces s. 11 (1) of the Act of 1937 which did not extend to the payment of annuities or permit any payment to a widow or dependant.

ADAPTATION OF LOCAL ACTS

Local Acts dealing with the superannuation of local authority employees can be grouped as follows :

(i) those which make provision for the superannuation of the employees independently of the Act of 1937 ;

(ii) those which, since 1948, have substituted the benefits of, or similar to those provided by, the National Health (Superannuation) Regulations for the benefits conferred on their employees by Part I of the Act of 1937 ;

(iii) those which provide benefits supplementary to, or in augmentation of, the benefits provided under Part I of the Act of 1937.

Under the Act of 1953 each of the authorities in the first group must, within twelve months after the making of the first superannuation regulations, make a scheme modifying the local Act so as to secure that the benefits of their superannuation fund are so adapted that contributors thereto will have rights not substantially less extensive or favourable than those enjoyed by contributors to funds maintained under the Act of 1937.

Authorities in the second group are enabled (and may be required by the appropriate Minister) to make a scheme for the

purpose of adapting, modifying, or repealing the local Act so far as it may be necessary and expedient to do so.

Similar powers are given to, or in respect of, the third group of authorities with the additional power to include in the scheme provision for discontinuing any supplementary benefit superseded by the adapting scheme and for disposing of any assets held for the purpose thereof.

A local Act scheme may be amended under the Act of 1953 so as to provide (i) in the case of the medical and nursing staff of the authority, that the benefits prescribed by the regulations shall be substituted for those provided under the local Act scheme; (ii) for the application of the provisions of the local Act to justices' clerks, probation officers, and their staffs, and (iii) for the reckoning of service after reaching the age of compulsory retirement.

RETROSPECTIVE APPLICATION OF CERTAIN BENEFITS

There will be a certain measure of retrospective application of the new provisions except, possibly, in the case of bachelors, widows who have died before the Act and regulations come into operation, and employees with more than five but less than ten years' service who retired and died before the new provisions came into operation but would otherwise be entitled to a short-service or death gratuity.

An employee who has retired on pension since September 30, 1950, will have an opportunity, when the new regulations come into force, of exercising an option for the new benefits and of having his pension adjusted accordingly.

If an employee has died since that date, whether he was still in the service of a local authority or had retired on pension at the date of his death, he will be deemed to have exercised an option for the new benefits where that is to the advantage of the widow, who will then receive a widow's pension from the date of her husband's death.

MISCELLANEOUS PROVISIONS

Reckonable service for superannuation purposes has been extended to include service (i) which an employee who has since transferred to the employment of a local authority was entitled to count for the purposes of the National Health Service (Superannuation) Regulations, (ii) during which an employee was a participant in the Federated Superannuation Scheme for either Universities or Nurses and Hospital Officers, (iii) in the armed forces of the Crown immediately following a period of indirect service, and (iv) as a supplementary teacher to managers of a non-provided school.

The provisions of s. 16 of the Act of 1937 entitling female nurses, midwives, and health visitors, to retire at age sixty, or at age fifty-five after thirty years' service, have been extended to female members of the staff of a local authority children's home or hostel provided otherwise than under an enactment relating to education, who have in their care persons who are under eighteen years of age and who hold either the certificate of the National Nursery Examination Board or a certificate in the residential care of children, or who have been responsible for the care of children in such a home or hostel continuously since attaining the age of fifty, or who fall within any class or descriptions of persons designated by the Minister.

Although the age of compulsory retirement prescribed by the Act of 1937 has not been amended, the provisions (i) exempting a contributory employee from liability to pay contributions and excluding service after reaching that age from the service which he may reckon for the purpose of calculating his superannuation allowance or benefits, and (ii) limiting a superannuation allowance to two-thirds of the employee's average remuneration, have been amended or repealed. The new regulations will permit service up to a maximum of forty-five years and up to age seventy to be reckoned for pension purposes (except service in excess of the equivalent of forty years' contributing service before reaching the age of sixty) and will enable an employee to earn an annual pension of up to forty-five sixtieths or forty-five eightieths of his pensionable pay.

Under the Act of 1937 if a contributory employee, in consequence of incapacity to continue to discharge efficiently the duties of his post, is transferred to another post at a reduced remuneration, or otherwise suffers a reduction of remuneration, he may continue to contribute to the superannuation fund the like amount as if his remuneration had not been reduced. The Act of 1953 permits such an employee to exercise a similar right if he is on leave of absence at a reduced remuneration otherwise than owing to ill-health or injury or if, for any reason, he is on leave of absence without pay.

The forfeiture provisions of the Act of 1937 have been repealed and replaced by discretionary powers enabling an employing authority to require the forfeiture of all or any of an employee's rights, or to withhold the return of all or part of his contributions only in the case of an offence of a fraudulent character or of grave misconduct arising in connexion with the performance of his duties or otherwise in relation to his employment.

The existing provisions relating to the admission of employees of other bodies have been repealed and re-enacted so as to (i) include bodies to whose funds any local authority contribute or to whom any grant is made out of moneys provided by Parliament, (ii) enable past service of employees of the admitted body to be reckoned in such manner as may be agreed, and (iii) enable local Act authorities to admit the employees of other bodies.

A common form local Act provision enabling a local authority, on the death of an employee to or in respect of whom there is due a sum not exceeding £100 when interest is disregarded, to pay that sum to any person appearing to be entitled thereto without production of a grant of probate or letters of administration, has been included in the Act of 1953 and is now available to all local authorities.

PROSIT.

ADDITIONS TO COMMISSIONS

HUDDERSFIELD BOROUGH

Mrs. Amy Brook, 63, Longley Road, Huddersfield.
Mrs. Barbara Cole, 67, Kaye Lane, Almondbury, Huddersfield.
Mrs. Florence Mary Rose Dawson, Fixby House, Huddersfield.
Colonel George Bertram Faulder, D.S.O., 3, Park Drive, Huddersfield.
Frank Lawton, 31, Thorpe Lane, Almondbury, Huddersfield.
Leonard Sharp, 127, Deighton Road, Deighton, Huddersfield.

NOTTINGHAM CITY

Mrs. Nancy Eileen Chambers, 21, Park Valley, The Park, Nottingham.
Mrs. Jessie Ruth Granger, Spinney Corner, Aslockton, Notts.
John William Kenyon, 74, Edwards Lane, Sherwood, Nottingham.
Miss Margaret Anne Procter, 12, Vickers Street, Nottingham.
Leon Harold Willson, 68, Lucknow Avenue, Mapperley Park, Nottingham.

SOUTH SHIELDS BOROUGH

Dr. John McKee, 234, Sunderland Road, South Shields.

WALSALL BOROUGH

Mrs. Olive Angela Bayliss, 49, Charlemont Road, Walsall.
Charles Bursey, 26, Grange Street, Walsall.
Kenneth John Jones, 386, Sutton Road, Walsall.
Thomas Edward Mayo, Banstead, Fernleigh Road, Walsall.
Mrs. Grace Miriam Tomkinson, 5, Haskell Street, Walsall.

YORKS E.R. COUNTY

Mrs. Kathleen Mary Downs, King's Mill, Driffield.

PERSONALIA

APPOINTMENTS

Mr. G. D. Squibb has been appointed chairman of the quarter sessions for the county of Dorset.

Mr. F. R. S. Nesbitt, partner in the firm of Brown & Nesbitt, Solicitors of Buxton, and clerk to the justices for the Buxton Petty Sessional Division of Derbyshire, has been appointed H.M. Coroner for the High Peak District of Derbyshire, in succession to the late Col. E. M. Brooke-Taylor.

Mr. W. Scaife has been appointed assistant official receiver for the bankruptcy district of the county courts of Northampton, Bedford and Luton ; the county courts of Ipswich, Bury St. Edmunds and Colchester ; and the county courts of Cambridge, Peterborough and King's Lynn.

Mr. G. H. Maynard, deputy clerk of the Stoke-on-Trent justices, has been appointed clerk to the Gravesend Borough justices in succession to Mr. L. H. Sharpe, who has resigned to take up an appointment in another part of the country.

Mr. A. Scroggie, assistant chief constable of Buckinghamshire since 1947, has been appointed chief constable of Northumberland in succession to Mr. F. J. Armstrong. Mr. Scroggie went to Buckinghamshire from Edinburgh City Police, which he joined in 1940. He became an inspector in 1942.

Dr. F. H. MacBeath Dummer has been appointed medical officer of health for Andover Borough and Rural District and Kingsclere and Whitchurch Rural District in succession to Dr. John Sleigh, who is taking up an appointment in Nova Scotia. Dr. Dummer is medical officer of health to Wycombe R.D.C. and Marlow U.D.C., and assistant county medical officer for Buckinghamshire. He was formerly assistant county medical officer in Hertfordshire, and a captain in the R.A.M.C.

Dr. Charles Metcalfe Brown, medical officer of health for the city of Manchester, is the new President of the Society of Medical Officers of Health for the session 1953-54.

RESIGNATION

Mr. G. Gordon Gartside, formerly deputy town clerk of the borough of Torquay, has left the local government service and set up in private practice at Western Mail Chambers, 6A High Street, Newport, South Wales.

RETIREMENT

Mr. L. G. H. Munsey, clerk of the peace and clerk of the West Suffolk County Council since 1924, retired at the end of September. Mr. Munsey was admitted in 1912 and in 1914 was appointed assistant solicitor to the Essex County Council. In 1920 he became deputy clerk of the peace and of the county council of West Suffolk and in 1924 succeeded the late Mr. A. Townshend Cobbold as clerk of the peace and of the county council. Mr. Munsey also holds the appointments of clerk to the Probation Committee for the West Suffolk Combined Area and clerk to the recently appointed West Suffolk Magistrates' Courts Committee.

Mr. W. H. Robinson, town clerk of Luton Corporation since 1932, is to retire.

OBITUARY

Mr. John Evans of Bargoed, died recently at the age of seventy-six. He was for twenty-three years, until he retired in 1944, clerk to the Gelligaer U.D.C.

Mr. David Owen Griffith, of Denbigh, died recently. Mr. Griffith, who for several years was clerk to Denbigh magistrates, was previously deputy clerk to Denbigh Borough and Isaled justices.

NOTICES

The next court of quarter sessions for the Isle of Ely will be held at Ely on October 7.

The next court of quarter sessions for the borough of Bridgwater will be held on Friday, October 23, at the Court House, Northgate, Bridgwater, at 10.30 *a.m.*

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 55.

AN UNUSUAL OFFENCE

On September 21, 1953, a twenty-eight year old fitter was charged before the learned stipendiary magistrate for Liverpool, Mr. A. McFarland, with flying a kite less than a mile from Speke Airport, contrary to art. 35 of the Air Navigation Order, 1949.

For the prosecution, it was stated that a kite was seen hovering at 100 feet precisely on a course in line with the main runway at the Airport. The kite, of paper construction, was 24 ins. long and 18 ins. wide, and carried a 12 ft. tail, and the total cost of construction was negligible. The police constable who saw the kite in the air, asked defendant if he had official permission to fly the kite, and the latter said he did not know that it was necessary.

The prosecutor commented at the hearing that probably not one person in 100,000 realizes that it is an offence to fly a kite in circumstances similar to those described above.

The stipendiary magistrate granted defendant, who sent a letter instead of appearing, an absolute discharge, saying that he was satisfied he had acted in ignorance, but he commented that it was important that the public should know of the regulations.

COMMENT

Section 1 of the Air Navigation Act, 1947, authorized His Majesty by order in council to make such provision for carrying out the Chicago Convention or generally for regulating air navigation as seemed to Him to be requisite or expedient, and subs. (4) of the section enacted that an order in council under the section might provide for the imposition of penalties not exceeding six months' imprisonment and a fine of £200.

The Air Navigation Order, 1949, made in pursuance of the powers detailed above, provides in art. 35 (1) (*a*) (ii) that a kite shall not be flown within the United Kingdom at a distance of less than three statute miles from the boundary of an aerodrome or be elevated at any place within the United Kingdom above a height of 200 feet from ground level, except with the permission in writing of the Minister, and subject to any conditions which may be prescribed or specified in such permission. R.L.H.

No. 56

A CASE UNDER THE FACTORIES ACT, 1937

A steel company was charged at Llanelly Magistrates' Court recently, with failing securely to fence a dangerous part of machinery, contrary to s. 14 of the Factories Act, 1937.

For the prosecution, it was stated that a local woman was working on a day in June as a roller on a finishing pair of rolls in the cold roll mill.

Thin sheets of black plates were passed through a series of rolling mills for polishing. The normal practice was for an operative to sit on a bench with a pack of sheets at her side, and feed the sheets one after the other into the intake nip of the rolls, which were 22 ins. in diameter and each weighed between two and three tons. Both rolls were set tightly, one on top of the other, and their speed was fifty-five revolutions a minute.

The woman was asked by the foreman to feed a sheet into the rolls so that he could check the setting. She proceeded to do this, and, in doing so, her right hand was severely injured, the middle finger and the top of another finger having to be amputated. No guard was provided for the intake nip of this machine.

Defending counsel suggested to an Inspector of Factories, who gave evidence for the prosecution, that the guard referred to above would have tended to increase rather than diminish the danger. The Inspector replied " It might lend itself to a number of minor accidents, but not to such serious injury ".

For the defendant company, which pleaded Not Guilty, it was submitted that the machinery in the case did not involve an intrinsically dangerous process, and that when the accident occurred the woman was not carrying out the normal method of operation.

Rather than sit down to feed the machine, she chose to stand, and her hand was, therefore, considerably nearer to the nip than it would have been if seated.

The court decided to convict and imposed a fine of £50.

COMMENT

It will be recalled that ss. 13 and 14 of the Act fall within Part II which deals with general provisions for safety. Section 13 sets out

the requirements in relation to the fencing of transmission machinery, and s. 14 provides that every dangerous part of any machinery, other than prime movers and transmission machinery, shall be securely fenced unless it is in such a position or of such construction as to be as safe to every person employed or working on the premises as it would be if securely fenced.

It is to be noted that the section imposes an absolute duty to fence securely every dangerous part of machinery and the very stringent provisions were summed up by Stable, J., in a well known passage in his judgment in *Carr* v. *Mercantile Produce Co. Ltd.*, (1949) 113 J.P. 488, where he said " The Factories Act is there not merely to protect the careful, the vigilant and the conscientious workman, but, human nature being what it is, also the careless, the indolent, the inadvertent, the weary, and even, perhaps, in some cases, the disobedient ". R.L.H.

No. 57

RIVER POLLUTION

The Rugby Magistrates sat recently to hear two charges preferred against a limited company arising out of the pollution of the River Avon.

The first charge alleged that the company had caused to flow into water containing fish, liquid matter to such an extent as to cause the waters to be injurious to the fish, contrary to s. 8 (1) of the Salmon and Freshwater Fisheries Act, 1923. The second charge alleged that the company had caused to enter the River Avon " poisonous, noxious or polluted matter " contrary to s. 2 (1) (*a*) of the Rivers (Prevention of Pollution) Act, 1951.

For the Severn River Board, it was stated that fish life for thirteen miles was largely destroyed, and that Coventry had to stop taking water from the Avon for a day or two. The cyanide content three days after fish were first seen to be dying was fourteen times the safety limit.

For the company, it was urged that there had been no wanton or negligent act. Liquid from a plating vat had been syphoned off as it had been several times in the past without complaint or damage, and flushed into the acid drains. The Company were now using another method.

The court fined the company thirty guineas upon each charge and ordered payment of thirty-five guineas costs.

COMMENT

Section 8 of the Act of 1923 contains stringent provisions designed to protect waters containing fish from poisonous matter and trade effluents, and subs. 3 of the section provides that no proceedings under the section shall be instituted except by a fishery board, or by a person who has first obtained a certificate from the Minister that he has a material interest in the waters alleged to be affected.

Section 74 of the Act provides that offences against the Act, except in the case of an offence for which some other penalty is expressly provided (s. 8 has no penalty expressly attached to it) shall be liable to a fine not exceeding £50.

Section 2 of the Act of 1951 provides in subs. 7 for a maximum penalty on conviction on indictment, of £200, and on summary conviction of £50, and there is a proviso enabling greater penalties to be imposed where it is shown to the satisfaction of the court that the offence was substantially a repetition or continuation of an earlier offence for which the defendant had been previously convicted. Subsection 8 provides that in the case of an offence by a body corporate, if it is proved that the offence was committed with the consent or the connivance of or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, such person, as well as the body corporate, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. R.L.H.

REVIEWS

Police Law. An arrangement of Law and Regulations for the Use of Police Officers. Twelfth Edition. By Cecil C. H. Moriarty, C.B.E., LL.D., formerly Chief Constable of Birmingham. London : Butterworth & Co. (Publishers) Ltd., 88, Kingsway, W.C.2. Price 12s. 6d. net, by post 9d. extra.

Although it is only two years since the eleventh edition was published, a new edition of *Moriarty* is undoubtedly necessary in view of the many important changes in the law that have taken place. The author tells us that he has deleted fifty statutes and has dealt with over forty new ones. Among important Acts affecting police officers may be mentioned the Magistrates' Courts Act, 1952, the Prison Act, 1952, the Customs and Excise Act, 1952, the Children and Young Persons (Amendment) Act, 1952, and the Prevention of Crime Act, 1953. In addition, a number of recent decisions are referred to, and statutory instruments affecting police work are also dealt with.

The convenient arrangement of chapters with numerous subheadings is continued as in former editions, and although the book is enlarged the price remains very reasonable for such an important and useful work. We have no doubt that *Moriarty* will continue to be the handbook for keen police officers of all ranks. Written by one who has had considerable experience of police work, it includes just what the police officer needs, and it can be trusted to state the law clearly and accurately.

Introduction to English Law. Second Edition. By Philip S. James. London : Butterworth & Co. (Publishers) Ltd. 1953. Price 15s. net.

When the first edition of this work appeared, we had the pleasure of reviewing it at 115 J.P.N. 186 and, after analysing its contents, said we could whole-heartedly commend it for what it set out to do. This is to provide teachers and students with a general conspectus of English law, as a key map to the territory which will later have to be explored in detail. To extend the metaphor, it gives a general idea of the lie of the land, so that (when the explorer finds himself in a thicket or morass created by statute law or contradictory decisions) he will have before his mind's eye a picture of the country as a whole. It seems that the work has fulfilled its promise, since after some two years a second edition has been called for. Additions and omissions have been made, but the learned author remarks in a preface to the new edition that suggestions made to him for adding or omitting have roughly cancelled out. On the whole all that has been necessary has been to bring up to date references to the statute law and case law, and to correct such few inaccuracies as inevitably appeared in the first edition. It is worth reminding the reader, who has not yet had occasion to use the book for the instruction of pupils or for his own satisfaction, that it differs from the older type of student's introduction, in relegating to a later and in a sense a secondary position the normal topics of contract, tort, and property, upon the view that (in the world in which the student will be called upon to practise) it is at least as important to him to have clearly in his head an outline of the structure of the welfare state and the socialized public services. For all that, there is an admirable treatment of the law of the constitution, not merely as embodied in the activities of welfare and other public agencies but as it is still to be deduced from cases on the common law. The student who has mastered the first two hundred pages of the book, under the heading of " public law," will be much less likely than his immediate predecessors in the legal world to treat the novel agencies, operating upon him and his clients, as something with which he is not concerned and they ought not to be concerned.

Refreshing our memory of the book in this second edition, we have once more been impressed by its completeness and its comprehensiveness. We do not know of any other which can, with the same advantage, be put into the hands of the young man or woman who has newly decided to embark upon study of the law.

The Standard Form of Building Contract. By Derek Walker Smith and Howard A. Close. London : Charles Knight & Co., Ltd. 1953. Price 37s. 6d. net.

This is an age of standard contracts covering a large part of daily life. The common form conditions attaching to the contract of carriage on the railways, to the supply of gas and electricity, and other everyday affairs, are universally known to exist, even though most of the persons affected by those conditions have small acquaintance with their details.

The standard form of contract with which the present work deals is different, in that those who use it can fairly be supposed to be familiar with its terms, but it deals with a complicated matter and, as the learned authors of the present edition point out, it was found some time ago that exposition of the clauses of the standard building contract was required. That standard contract was drawn up by a joint committee of the Royal Institute of British Architects and the National Federation of Building Trades Employers (a committee which its sponsors styled a "joint tribunal") and the contract which emerged from the committee's discussions was drawn and settled by counsel. There had been an earlier edition, which had been a good deal criticized for its poor draftsmanship, but the form now in use seems to have given general satisfaction in this respect. (It is a piece of history not without interest for our own readers, though possibly not known to the learned authors of this book, that counsel who, while in private practice, drew the standard building contract was, in September, 1939, offered a position in the Ministry of Health, which involved supervision of business relating to the contracts of local authorities. It is no accident that the form of standard contract for private building work came to be supplemented by extra clauses adapting it to the requirements of building work carried out by local authorities, conforming to the

statutory provisions affecting their activities, and to the model standing orders for contracts issued from the Ministry of Health after the passing of the Local Government Act, 1933). In the present annotated edition of the standard contract, the learned authors have taken as the principal form that adapted for use by local authorities, seeing that at the present time so much building is done under local authority direction, and they have indicated where there are divergencies, in the slightly simpler form recommended for use by private building owners. The standard contract settled in 1939 has needed modification here and there, to remove ambiguities or meet criticisms arising in practice, and there have been changes due to the adoption by Parliament of a new fair wages clause, and the new law of national insurance. But these modifications have all been in details, and the standard contract as a whole has stood up remarkably well, in a world of change. Of the two authors of the present commentary upon that contract, Mr. Walker Smith is a member of the bar and Mr. Close a solicitor and (we believe) solicitor to the National Federation of Building Trades Employers. They have had assistance from two other members of the bar. They have, wisely, reproduced the introduction to a previous edition of the work, explaining the inception of the standard building contract in its "private" form, which came into use just before the war. The contract in the narrow sense of that word is a very short document, covering no more than two pages of the book with generous blanks. The gist of the contemplated agreement between a builder and a building owner is comprised in voluminous conditions, referred to in cl. 1 of the contract itself, and these conditions provide for all the contingencies which are to be expected in the execution of building work. Each of the conditions is provided by the learned authors with a general note setting out its effect, and with detailed notes upon every phrase which can give rise to doubt. Where such phrases have been interpreted judicially, the purport of the decision is given; we notice that some of these decisions are those of courts elsewhere than in the United Kingdom; it is proper and helpful that decisions of these other courts shall be noticed, since building goes on all over the world, and presumably the United States and Dominions will have found the need for standard contract forms parallel to those in use here.

The ordinary building contract cannot be a wholly simple document even where the special law applicable to local authorities does not come into the picture, and private parties alone are concerned. The relation between the main contractor and the sub-contractors and suppliers is complex, and capable of giving rise to disputes, while the dual position of the architect, who is employed by the building owner and at the same time has to adjudicate between the owner and contractor, is a curiosity of customary law. The present work carefully picks up every point of doubt or difficulty which has been experienced, and can be safely relied upon by the legal and architectural advisers of local authorities and by professional men in private practice.

Appended to the fully annotated contract form, as now in use, there is a copy for reference of the earlier forms prepared by the R.I.B.A. in 1909 and 1931, and a valuable collection of practice notes issued by the "joint tribunal" above mentioned. There is also a standard form of sub-contract which has been negotiated between the National Federation of Building Trades Employers and the Federation of Associations of Specialists and Sub-Contractors, and Schedules of Day Work Charges for various forms of building work. Altogether, we have been unable to think of anything likely to be useful which has been omitted, and we can confidently recommend this new annotated edition to any of our readers who have to deal with building matters.

TALKING SHOP

By W. E. LISLE BENTHAM

(*Concluded from p.* 630, *ante*)

CONDITIONS OF EMPLOYMENT

There is no doubt that, in the past, working conditions in shops were sometimes deplorable. Part II of the Shops Act, 1950, therefore, re-enacts the powerful safeguards which from time to time have been found necessary for the protection of shop assistants and in particular young persons, *i.e.*, persons under eighteen, not being children whose employment is regulated by s. 18 of the Children and Young Persons Act, 1933, or s. 28 of the Children and Young Persons (Scotland) Act, 1937 (s. 74). Thus, every assistant is entitled as of right to a weekly half-holiday starting at 1.30 *p.m.* on such day as the occupier is to specify in a notice affixed in the shop, although he may specify different days for different employees. There is an exception in respect of the week preceding a bank holiday, when the employee forfeits his half-day for that week, provided he is not employed on the bank holiday and, in addition, is given his half-day on a weekday during the following week (s. 17). This section does not apply, however, to young persons who are not employed for more than twenty-five hours in any week, or who are not employed in a theatre before midday on any weekday, but young persons employed in connexion with any retail trade or business are otherwise entitled to their half-day even when the trade or business is being carried on in some place other than a retail shop, except where it is a place governed by the Factories Acts, 1937 and 1948, or where it is a wholesale shop or warehouse not occupied for the purposes of his trade by the retailer and the young person is not employed in such premises, nor in the collection or delivery of goods or in attendance upon customers or in carrying messages or running errands. A young person is deemed to be employed about the business of a retail shop notwithstanding that he receives no reward for his labour (s. 18).

Except as regards employees who are members of the occupier's family, maintained by him and dwelling in his house, shop assistants are also entitled to intervals for meals as set out in sch. 3, so that in general they shall have an interval of at least twenty minutes after every working period of six hours or, in the case of young persons, five hours and five and a half hours on half-days. If employed for a period which includes the hours from 11.30 *a.m.* to 2.30 *p.m.*, they must have a dinner interval of not less than three-quarters of an hour, or one hour in cases where that meal is not taken in the shop or some attached building; and, if employed between 4 *p.m.* and 7 *p.m.*, a tea interval of not less than half-an-hour. There are variations and modifications relating to refreshment and market trades and in respect of certain young persons employed in residential hotels (ss. 19 and 20). The occupier of refreshment premises, whether licensed for the sale of intoxicants or not, may by prescribed notice elect, in place of the provisions contained in ss. 17 to 20, that other provisions shall apply to his shop assistants who are wholly or mainly employed in connexion with the sale of intoxicants or refreshments for consumption on the premises. These other provisions limit such employment to sixty-five hours a week exclusive of meal times, secure to every such assistant thirty-two whole weekday holidays in every year, not less than six consecutive days being holidays with full pay, and also provide for certain Sunday holidays and meal time intervals (s. 21).

Section 22 limits Sunday employment and provides for shop employees working on a Sunday being given whole-holidays or half-holidays in lieu thereof on weekdays in addition to their statutory half-holidays according to whether their Sunday employment is for more or less than four hours, but these provisions do not apply to certain specified businesses, such as those connected with the refreshment, milk or retail meat trades, or with the post office. In particular, they do not apply to employment in the sale or supply of medicines or medical or surgical appliances by a registered pharmacist who has contracted with an Executive Council under the National Health Service Acts to keep open on Sundays, provided the employment is not for more than two hours, nor for consecutive Sundays, and provided the assistant on a weekday, other than his half-day,

of the previous week or the week commencing with the Sunday of his employment has not been, or will not be, employed before 10.30 *a.m.* or after 6 *p.m.* The occupier is to keep prescribed records of the names and hours worked by Sunday employees and as to the holidays to which they are entitled and have received.

The Act contains special provisions relating to the hours of employment of persons between sixteen and eighteen (s. 24), and in particular those employed in the catering trade (s. 25), and in selling accessories for air-craft, motor vehicles and cycles (s. 26), and also for those under sixteen (s. 27). There are also provisions relating to night employment (s. 31), the provision of seats for female shop workers (s. 37), and relating to sanitary and other arrangements for the health and comfort of shop workers (s. 38).

SUNDAY TRADING

Formerly, all Sunday trading was absolutely prohibited by the Sunday Observance Act, 1677, until restrictions were placed upon the right to prosecute under it by the Sunday Observation Prosecution Act, 1871. Later, these Acts were rendered unimportant by the Shops (Sunday Trading Restrictions) Act, 1936, which has now been repealed by, and replaced by Part IV of, the Shops Act, 1950.

In general, the opening of shops on Sunday is still forbidden, but there is exemption from closing in respect of the sale of a considerable number of goods as listed in the Fifth Schedule, including, *e.g.*, intoxicating liquor, certain foods, sweets, medicines, tobacco and newspapers, and the transaction of post office or funeral furnishing business (s. 47). Moreover, the local authority is empowered to make partial exemption orders in respect of specified shops in its area for the purposes of the transactions mentioned in sch. 6, *e.g.*, the sale of bread, fish and groceries, subject to the limitation that no shop may open after 10 *a.m.* on Sundays except in cases of emergency and in such other cases as may be specified in the order (s. 48).

In holiday resorts the local authority may by order provide that, on specified Sundays not exceeding eighteen in any year, shops or any class of shops may, subject to such conditions and during such hours as may be specified, be open for the purpose of selling articles required for bathing or fishing, photographic requisites, toys, souvenirs and fancy goods, books, stationery, photographs, reproductions and postcards, and any article of food (s. 51, sch. 7). The Gowers Committee recommended that the permitted number of Sundays should be raised to twenty-three and the Association of Health and Pleasure Resorts with the support of the British Travel and Holiday Association have asked for twenty-six, on the ground that many seaside resorts have long holiday seasons extending from Easter well into October. Another source of irritation to both shopkeeper and visitor is that a shop opening every Sunday will sometimes be open for the very restricted range of goods exempted by the Act and at other times for the wider range permitted under a local order, and the casual shopper naturally cannot understand why a purchase which is legal on one Sunday should be illegal on another. This strange anomaly could be mitigated by permitting such wider range of articles to be sold on all Sundays in holiday resorts.

Elaborate provision is made to meet the case of shops, the occupier of which is a person of the Jewish faith, as regards observance of the Jewish Sabbath, enabling him to register with the local authority, when generally speaking the Sunday closure is applied to the Saturday (s. 53) and exemption is afforded to Jewish retail dealers in Kosher meat on Sundays, subject to certain safeguards (s. 62). Finally, there are special provisions relating to Sunday trading in London as respects customary street markets and trades (s. 54).

CONCLUSION

From the above survey of the main provisions of the law relating to shops it might be argued that, however bad the conditions of the shop employee may have been in the past, the pendulum has now swung the other way and that the shopkeeper, instead of being harassed by the restrictions and complexities which have found their way into the Shops Act, 1950, should be given greater freedom to carry on his business more or less in his own way in open competition with his rival traders. The general public would stand to benefit, not only from such competition, but also by increased shopping facilities, and in these enlightened days the shop assistant who was prepared to work slightly longer hours, if given the opportunity, might welcome the chance of increasing his earnings without suffering undue hardship.

Some control of shops and certain safeguards there obviously must be, but it may be thought that such questions as closing hours and holidays are far better regulated by agreement between the national and local organizations representing employers and employees than by the necessarily complicated provisions of an Act of Parliament.

It is not always wise to look abroad to see how such matters are dealt with in other countries, because policy is frequently dictated by climatic and other conditions peculiar to the country concerned, but we might well profit from a study of the report on Retailing, recently published by the Anglo-American Council on Productivity. From that we should learn the surprising facts that there is no law regulating the shop opening or closing hours in the United States, that on the Pacific Coast the normal trading hours are 9 *a.m.* to 9 *p.m.*, and on Sundays usually 10 *a.m.* to 6 *p.m.*, and that, in California, where trade union

organization among food workers is strongest and where wages are highest and working conditions most favourable, the shop-trading week is much longer than elsewhere. Longer shopping hours need not necessarily be at the expense of the shop assistant, for we are also told in this report that a forty-hour week, with a maximum working day of eight hours, is customary throughout the food trade. The forty hours are generally divided into a five-day week, but there are such variations as four eight-hour days and two four-hour days, so that relief workers have to be employed and a quarter of the employees are part-timers —high-school boys (aged seventeen or eighteen) working after school hours and on Saturdays, married women, school teachers and office workers who want to earn extra money. Food, no doubt, for thought !

À LA CARTE

A remark recently made by Sir Alexander Maxwell, Chairman of the British Travel and Holidays Association, bids fair to release a spate of letters to the Press on another of our national foibles. Sir Alexander has deprecated the practice, now followed by all types of eating-houses, of printing the *menu* wholly or partly in a jargon fondly believed by the restaurant keeper to be French. His strictures have called forth some support in a letter to *The Times* by a New Zealand visitor who described the practice as " an insult to intelligent British people " and as " inflicting on at least eighty *per cent.* of the guests a crossword puzzle without any clues, at a time when they are feeling more hungry than playful."

Their graphic language expresses a very real grievance, but the protest seems to us to illustrate whatever is the converse of " hitting the nail on the head." Mr. Stanley Holloway, a wholesome English Comedian (whose North Country accent used to delight us in the days before the nasal New York monotone came to be regarded as the apotheosis of stage humour) was wont to recite a poem entitled *Albert and the Lion*—the affecting tale of a small boy who, by a " nasty mishap," was swallowed by a lion in the Blackpool Zoo. We always enjoyed best the stanza in which the bereaved mother expressed her indignation :

> " And mother said ' Right's right, young feller !
> I think it's a shame and a sin
> For your lions to go eating up people—
> And after they've paid to come in ! "

To the lawyer the final line is of interest in its terse summing-up of the distinction, in the law of negligence, between an invitee and a gratuitous licensee, and illustrates, better than any text-book, the principle of such decisions as *Addie & Sons (Collieries) Ltd.* v. *Dumbreck* [1929] A.C. 358. To the layman the humour of the situation lies in the subtle allusion to the grievance uppermost in Mrs. Ramsbottom's thrifty Lancashire mind. By the same token the protest voiced by the correspondent to *The Times* against the use of French, or near-French, expressions in the bill of fare seems at first sight to us to be beside the mark. The cooking in English restaurants being what it is, we should have expected the resentment of visitors from overseas to be directed against the contents of the dishes themselves rather than against the colourable representations that disfigure the *menu*—all too often an exercise in ingenious fiction where *suppressio veri* jostles *suggestio falsi* for a place.

The practice complained of affords yet another illustration of the prevalent Anglo-Saxon vice of hypocrisy. Astute students of national psychology have observed the general addiction of the Englishman and the American to romantic self-deception ; the habit has been indulged in for so long that it has become second nature, and has led to a *naïf* impression, on both sides of the Atlantic, that the nature and substance of something nasty can be changed for the better by giving it a pleasant-sounding name. The practice permeates diplomacy, politics, journalism, science and the arts, and the whole of family and social life. It is by no means confined to any one political party or any particular class. So deeply ingrained is this habit that in the seventeenth and eighteenth centuries it was enshrined in a system of philosophy, inaugurated by Locke, developed by Berkeley and carried to its logical conclusion by Hume. The theory of Representationalism (horrid word !) teaches that all we really *know* are the ideas in our own minds, whether such ideas are of tangible or intangible things, and that it is unnecessary and misleading to postulate the existence of the actual things themselves. The origins of the theory are, of course, much older than Locke ; Plato taught that the *ideas* or absolutes are the only true reality, though in his system they had an existence independent of the mind of man. Subjective idealism (as the theory of these English philosophers is known) has few open adherents today, but their teaching has left its mark on the thought-processes of the English-speaking peoples. Its present-day development, beloved of statesman, newspaper-proprietor, economist and playwright, consists in formulating any opinion that happens to float into one's individual consciousness, at, say, 7 *p.m.* on a Tuesday evening, and issuing it to the public as an eternal, immutable, absolute truth ; secure in the knowledge that by the following Friday morning, when the state of one's digestion, or of the weather, has brought about a *volte-face* to the converse opinion, the same public will accept as gospel from one's lips an equally dogmatic statement in the opposite sense.

Historians of a future age will have much to say about the social results of applying this method, consciously or unconsciously, to such expressions as " freedom," " democracy," " public interest," " morality," " un-American activities " and the like—expressions, the significance of which varies according to the ephemeral and fluctuating prejudices of those who misuse and pervert them. The victims of such perversions are liable to be as bewildered as are the diners-out, who discover that *Consommé Julienne* means a bowl of tepid water tasting slightly of onion, that what is described as *Saumon au Gratin* is really a dilapidated fragment of boiled cod surrounded with sodden bread-crumbs, that *Poulet Sauté à la Marengo* is the name given to some bits of half-cooked rabbit smothered in nondescript vegetables, and that *Mousse à l'Ananas* represents a portion of vegetable marrow embedded in a sickly-looking paste, with pineapple-flavouring out of a tin. The worst of the outrage is in the substance rather than the name ; but there is such a thing as adding insult to injury. The abuse of gastronomic language, bringing back nostalgic memories of delicious meals savoured on the Boulevard Montparnasse or in the Place du Tertre, changes what was merely insipid into gall and wormwood, and takes the consumer through all the stages from indifference to nausea. Hamlet must have suffered a similar experience when he uttered his spirited protest against confusing that which " is " with that which merely " seems " ; much of his melancholy probably originated with digestive trouble from home-cooking masquerading in a French disguise :

> " But I have that within which passeth show—
> These but the trappings and the suits of woe."

A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Burial Acts—*Disused burial ground—Recovery of expenses—Limitation.*

For what period are "costs and expenses" incurred by a parochial church council in pursuance of their duty of maintaining and repairing a churchyard closed by Order in Council recoverable from the council of the urban district in which the churchyard is situate? The position with respect to the transfer of the functions of liabilities of the parochial church council to the district council on the giving of the former's certificate is understood, but your inquirer has doubt about what past expenditure may be included in this certificate. Can the district council be required to reimburse the previous six years' expenditure? BON.

Answer.

From the structure of the section it is clear that the certificate can include expenses already incurred, and, in absence of any expressed limitation in s. 18 of the Burial Act, 1855, we think the ordinary limitation to six years in s. 2 (1) (*d*) of the Limitation Act, 1939, applies —"any sum recoverable by virtue of any enactment."

2.—Contract—*Right of way—Liability to contribute to cost of maintenance.*

My council recently acquired the site of a private occupation road. The road was conveyed to the council together with the benefit of (*inter alia*) convenants with the council's vendor contained in a number of earlier conveyances of land adjoining the road. These covenants were either to pay a specific sum towards the cost of maintaining the road or in some cases to pay a reasonable proportion of the cost of its maintenance. The conveyance to the council was also made subject to rights of way over the road granted to the adjoining owners by the earlier conveyances. The question has now arisen whether the council are entitled to enforce the convenants to contribute to the cost of maintenance. Whilst these covenants are positive in form it seems, as the rights of way granted to adjoining owners were made subject to the liability to contribute to the maintenance of the road, that that obligation has been imposed as an incident to the right of way itself and that the question does not turn on whether the covenant can run with the land. Your opinion as to the enforceability of the covenant to contribute to the cost of maintenance would be appreciated. DIM.

Answer.

This is in our opinion very doubtful: *Haywood* v. *Brunswick Building Society* (1881) 46 J.P. 356.

3.—Criminal Law—*Breaking and entering—Coalhouse under same roof as, but with no internal communication with, the rest of the house.*

A man forces the lock of a coalhouse door, enters and after breaking into a pre-payment gas meter, steals the cash and the container.

Although *it does not give access to the inside of the house*, the coalhouse is situated under the stairs and entry is gained through a door on the outside of the house.

What offences are committed by the man if he completes the act between (1) 1 *a.m.* and 2 *a.m.*? (2) 1 *p.m.* and 2 *p.m.*?

It is suggested that he may be guilty of burglary (s. 25, Larceny Act, 1916) and malicious damage (s. 51, Malicious Damage Act, 1861) or at (2) of storebreaking (s. 26, Larceny Act, 1916) and malicious damage as above. JOPA.

Answer.

As we understand the question this is one building, with the coalhouse or cellar an integral part of that building and not, in any sense, a separate building. We think, therefore, that this was a breaking and entering of a dwelling house and the offences committed were:—

1. As stated.
2. Housebreaking and malicious damage.

4.—Evidence—*Dangerous dog—Allegation that dog not under proper control—Evidence of behaviour of dog on other occasions and of a previous order to keep under control.*

A client of ours was charged that she "on May 26, 1953, at the parish of S was the owner of a certain dangerous dog which was not then and there kept under proper control, contrary to s. 2 of the Dogs Act, 1871." On the hearing of the summons, the prosecution contended that they were entitled to adduce evidence of the manner, allegedly dangerous, in which the dog had behaved on occasions prior to May 26, generally as to its character and of an order made under the same section against the defendant in respect of the same dog in 1947. Our objection to such evidence was rejected by the bench. In your view, was it admissible? JETE.

Answer.

The court had to decide whether this was a dangerous dog, and in our view evidence as to its behaviour on other occasions and as to the previous order was both relevant and admissible.

5.—Evidence—*Sexual offences—Leading questions to nervous child, or female, witnesses.*

With regard to P.P. 1, p. 323, *ante*, is not the following case of assistance to your correspondent: *R.* v. *Hodgson*, 18 Crim. App. R. 7, the headnote to which case reads:

"Where on the trial of a sexual offence a female witness is embarrassed and diffident a leading question to supplement her previous answers may be put." In that case the questions were put by the court. J.J.J.

Answer.

We do not think that the case cited is authority for saying that the prosecution may ask such leading questions. As our correspondent states, the question there was asked by the judge, and it is stated in the judgment that there was ample other evidence to support the conviction. We think that this case should be treated as one decided on its own rather special circumstances, and that further authority is needed to justify any extension of the decision.

6.—Food and Drugs Act, 1938, ss. 3 and 85.

A has recently received four summonses for alleged selling of milk not of the quality demanded by the purchaser, contrary to s. 3 of the Food and Drugs Act, 1938, and also an equal number of summonses for giving a false warranty in writing contrary to s. 85 of the same Act. The informations are laid by a sampling officer and allege a sale of the milk to the Milk Marketing Board. The warranties are also alleged to have been given to the Milk Marketing Board. All the summonses relate to the same date.

A is a farmer who has signed the usual contract to sell all his milk to the Milk Marketing Board. The contract contains a warranty that the milk shall be free from adulteration.

On the date in question A placed four churns of milk on a milk stand outside his farm and they were collected at one and the same time by a milk lorry on behalf of the Milk Marketing Board. Each of the four churns bore a label upon which were printed words to the effect that the milk was warranted to be free from adulteration. While the milk was in transit the sampling officer duly took a sample from each of the four churns, and each sample was found on analysis to contain added water.

The question which arises is whether a summons under s. 3 and under s. 85 of the Act can be issued in respect of each churn or whether the prosecution is limited to one summons under each section in respect of the whole consignment.

Bell's Sale of Food and Drugs quotes *Fecitt* v. *Walsh* [1891] 2 Q.B. 304 as authority for the proposition that separate informations may be laid in respect of samples taken from more than one churn. But on referring to the report it emerges that the decision was based on the ground that each taking of a sample was deemed to be a sale by reason of a provision to that effect contained in the legislation then in force. It is in fact expressly stated that if the sale to the purchasers of the bulk had been the subject of prosecution only one summons could have been issued because "each day's work was one sale."

Now that the concept of a notional sale to the sampling officer no longer exists and as the sale to the Milk Marketing Board is expressly relied on as above mentioned, I submit that there should be only one information under s. 3 and one under s. 85 in respect of the whole consignment consisting of four churns. It is submitted that there was only one "sale" and that there could hardly be more warranties than there are sales.

I would appreciate your opinion and a reference to authorities if possible. SILA.

Answer.

We are inclined to agree with our learned correspondent, but only the High Court can settle the point, upon which it is not difficult to adduce reasonable arguments in support of either view. It is worth notice that in *Telford* v. *Fyfe* (1908) S.C.(J) 83, the Court of Justiciary declined to follow *Fecitt* v. *Walsh*, *supra*, *see* 15 *Halsbury* 146, note X, where these and other cases are cited.

7.—Housing Act, 1936, s. 11—*Undertaking not to use for habitation—Conversion to other use—Time limit.*

The council is considering the condition and future use of three cottages, having served a "time and place" notice under s. 11 (1) of the Housing Act, 1936, on the owner. The owner is prepared to give an undertaking that the cottages will not again be used for human

habitation, but as the cottages are in an open position the council is reluctant to allow them to remain standing in their present dilapidated condition. The owner says he intends to remove the roofs and turn them into pigsties, but is unwilling so far to give a date by which he will have this done. The council inclines to the view that the undertaking is unacceptable in the circumstances and that a demolition order should be made. It has been suggested that an undertaking not to re-let and to turn the cottages into pigsties, within a specified period, in a manner to be approved by the council, should be obtained and that its breach by not carrying out the work within the specified time would enable the council forthwith to make a demolition order. I am in some doubt whether such an undertaking would be enforceable and feel that the better course would be to accept a simple undertaking not to re-let and if, after the lapse of a reasonable time, the conversion has not been made, to apply for a demolition order under s. 58 (i) (*b*) of the Public Health Act, 1936. BODA.

Answer.

The words " within a specified period " in s. 11 (3) relate only to rendering the house fit for human habitation, and the words " within the specified period " in subs. (4) are linked to this. The council are not bound to accept an undertaking under subs. (3), but if they do so, and the undertaking is that the house shall not be used for human habitation, the council cannot, upon pain of demolition in default, attach to this understanding a further obligation under the section, *e.g.*, to make the house fit for pigs within a specified period. But if pigsties in this situation would be unobjectionable, it seems better to let them come into being, in the present condition of meat supplies. The council can quite properly accept under s. 11 (3) the undertaking not to use for human habitation, and at the same time warn the owner that they will go to justices under s. 58 (1) (*b*) if the houses are not fit for porcine occupation, or otherwise made decent, within a period specified by them.

8.—Justices' Clerks—*Periodical payments—Duty of clerk to give receipt—Payment sent by post.*

An average of 1,100 payments are made to the collecting office of this court each week. A receipt is prepared in respect of each single payment. If payments are made personally or if the man making payment sends a stamped envelope for the purpose (covering about 300 payments per week) the receipts are handed or sent to the payers, but otherwise they are filed and are available to the payer if requested. I believe this procedure to be the current practice in many collecting offices, though some doubt has been cast upon its validity by the note to r. 39 in *Chislett on the Magistrates' Courts Act*. With all respect to the learned author my view is that the procedure outlined above is a sufficient compliance with r. 39, for there seems to be nothing in that rule to qualify the common law rule that it is for the debtor to seek out his creditor. If the debtor chooses to employ the Post Office as an agent in making his payment surely it places no obligation on the creditor to use the same agency unless means are provided for that purpose? A test has shown that to address an envelope and post the receipt in respect of each of the 800 weekly payments for which no stamped envelope is provided would require the services of an additional clerk in the collecting office. More important perhaps than this, for reasons of privacy a great many defendants would be justifiably incensed if receipts were to be sent to their homes or lodgings contrary to their wishes. I should appreciate your views on this important question. J.C.J.B.

Answer.

We appreciate the point of view expressed in *Chislett*, and we agree that r. 39 requires that a receipt be given. But r. 32 provides that periodical payments sent or received by post are so dealt with at the request, risk and expense of the sender or recipient. We think, therefore, that a clerk may feel that he complies with r. 39, in the case of a person who sends by post, by informing him that a receipt is always prepared and that he can obtain it by calling, or sending someone for it, or by sending a stamped addressed envelope so that it may be forwarded to him. The expense of sending the receipt is, we think, part of the expense involved in making the payment by post and is chargeable, therefore, to the person making the payment.

We agree that in practice men often do not wish to have receipts sent to their addresses, and some send regularly without disclosing their addresses.

9.—Landlord and Tenant—*Standard rent—Improvement—Work following abatement notice.*

The following circumstances frequently arise. An abatement notice is served under s. 93 of the Public Health Act, 1936, requiring that a defective condition in a dwellinghouse be remedied. Owing to the supply situation or other extraneous circumstances, it may be virtually impossible to remedy the defect, except by totally replacing the defective item. For instance, an old fashioned cooking range may require repair, but because spare parts are unobtainable the landlord may be obliged to fit an entirely new range. Similar circumstances may exist with regard to insanitary sinks or W.C. accommodation.

Your opinion is requested on the following points :

1. Does the fact that work has been carried out as a result of service of an abatement notice necessarily disqualify that work from being an improvement or structural alteration as defined by s. 2 (1) (*a*) of the Rent, etc., Act, 1920?

2. If such work is not automatically disqualified, may an increase of rent be charged in respect of the whole cost of the work, the landlord's argument being that because of replacement repair has become unnecessary, and that the replacement is an improvement?

3. Is the position different with regard to properties falling within s. 2 of the Housing Act, 1936? B.B.B.

Answer.

1. We think not. The tenant gets the same benefit, whether the landlord's reason was benevolence, business acumen, or compulsion by the council. To hold otherwise would encourage landlords to do the minimum.

2. In our opinion, yes, on principle, and we find nothing in the Acts to displace this conclusion.

3. We do not think it is different.

10.—Magistrates—*Jurisdiction and powers—Conviction in absence of defendant after proof of service—Power to allow case to be re-opened if sentence has not been passed?*

A recent case was heard in the absence of the defendant (service having been proved) and, after hearing the evidence for the prosecution, the defendant was convicted. While considering the sentence it came to light that the accused was in hospital and unable to attend court. The court felt that it was wrong that a defendant should be convicted in his absence when he was prevented in this way from attending court and defending the case should he wish to do so, and the magistrates withdrew the conviction and adjourned the case for three weeks with a view to giving the opportunity to the defendant of defending the case should he wish to do so. I should be interested to know whether you consider that the case of *R.* v. *Campbell* makes the action taken by my magistrates incorrect. If so, it certainly seems that there should be some provision to enable a decision to convict to be amended during the course of the remainder of the sitting. On the question of alteration of plea, although it does not affect the case before my magistrates, it is difficult to draw the line between *R.* v. *Campbell* and *R.* v. *Durham Quarter Sessions* [1952] 1 All E.R. 466 when it was held that a change of plea should have been allowed after a plea of guilty. On the question of altering judgment after conviction you do not refer to *Jones* v. *Williams* (1877) J.P. 614 quoted in *Stone*, p. 277. JAR.

Answer.

We have read with care the full report of *R.* v. *Campbell, Ex parte Haye* in (1953) 2 W.L.R. 578. All the relevant cases, including *Jones* v. *Williams*, *supra*, were cited to the court.

In his judgment Lord Goddard, C.J., speaks of the magistrate having heard the case and having determined it by passing sentence. Later he speaks of the prisoner in such a case being able to say, if brought before another magistrate, " I have already been convicted. I was not only convicted, I was sentenced " and Lord Goddard added, " The fact that a magistrate announces in court that there is a conviction amounts to a conviction. That was laid down in the well known case of *R.* v. *Sheridan* [1936] 2 All E.R. 883." In this latter case sentence was not passed, but nevertheless it was held that the prisoner could not be re-tried.

On the whole, therefore, in spite of the hardship which may be involved, it seems that *R.* v. *Campbell, Ex parte Haye*, *supra*, has made it clear that if a magistrate having jurisdiction to try a case does so and convicts whether on a plea of guilty or after a trial, then the case cannot be retried even if sentence has not been passed.

In the case to which our correspondent refers we think that provided the summons was duly served and service was properly proved the case cannot be re-tried. Even if the service or its proof was not regular it might be said that the magistrate who had convicted was *functus officio* and the remedy was by *certiorari*.

If we are right it follows that magistrates will need to be even more careful, in the future, than they have been in the past not to try cases in the absence of the accused unless they are abundantly satisfied that no injustice can result from their so doing.

11.—Magistrates—*Jurisdiction and powers—Partnership summoned and convicted as limited company—Whether fresh proceedings to be taken against partners.*

A company served with a summons for " failing to cause record of driving hours to be kept " under s. 16 of Road and Rail Traffic Act, 1933, and the Regulations made thereunder, sent a letter admitting the offence, to the court. Upon acknowledging the receipt of the fine notice, the company have drawn attention to the fact that in the summons the company is described as a limited company, whereas in fact

the company is not a limited one, but a partnership. Does the conviction stand, and if not, could the partners of the company be again summoned, or would the decision in *City of Oxford Tramway Co.* v. *Sankey* (1890) 54 J.P. 564 apply? SPED.

Answer.

There being in fact no limited company, the conviction was in respect of a person who does not exist. It would have been possible, on the authority of the case cited, to amend the summons if the real defendants had appeared and agreed to such amendment, but not otherwise. It would not be right to enforce the fine imposed on the non-existent company by distress on the goods of the partnership, as the proceedings seem to have amounted to a nullity.

Assuming that fresh proceedings would be in time, there appears to be no reason why they should not be taken against the partners, who should, naturally, be told why they have been found necessary.

12.—Public Health Act, 1936—*Trough closets—Whether water closets.*

A non-provided school has sanitary accommodation consisting of nine closets served by a continuous trough. This discharges into a sewer at each end. In the middle are two flushing tanks. The whole are in such a state that they are prejudicial to health and a nuisance. Arrangements are being made for them to be converted, but an approach has been made to my council for a grant towards the cost. The question arises whether my council can legally make a grant as it is thought that the system is a water closet within the definition of s. 90 of the Public Health Act, 1936.

The point has been made that, in view of the partition walls, although the trough is a continuous trough, the partitions make them into separate closets which require separate flushing tanks. It would be interesting to know whether this point has been made before, and to have your views thereon. CALI.

Answer.

The point is new to us, but we think the "separate provision" named in the definition of water closet must mean that each closet pan has a flushing apparatus to itself. This produces the fantastic result that these trough closets are privies (though they would be water closets if each pan had a cistern). It follows that s. 47 (4) empowers the council to contribute if so minded—though it seems odd that this should follow from an awkwardly worded definition.

13.—Road Traffic Acts—*Insurance—Trailer drawn by motor cycle with goods carrier attached—Need for endorsement on policy.*

It was with interest that I noted the point raised at P.P. 9, at p. 272, *ante*. Quite recently I was concerned with a case which appears to be on all fours with the one described by your correspondent save that in my instance the towing vehicle was a motor cycle combination with a goods-carrying sidecar attached. The policy contained the same provisions as stated in the earlier question and the opinion of the insuring company was sought.

The company expressed the view that they considered themselves on risk and liable to meet any claim arising out of the use of the vehicle. This view was based on a supposition that, as the towing of a trailer, other than a disabled mechanically propelled vehicle, was not specifically excluded in the policy then it must be considered as an accepted risk.

Following the words of the L.C.J. in the case of *Carnill* v. *Rowland* [1953] 1 All E.R. 486; 117 J.P. 127, it would appear rather difficult to institute and substantiate proceedings for an offence under s. 35 of the Road Traffic Act, 1930, in such an instance as above.

It is appreciated that the opinion I have quoted is only the opinion of one company and that another company may take a different view. Your remarks in answer to the previous question will apply equally in this instance but I would greatly appreciate any further observations you may care to make. JIP.

Answer.

As we said in answering the former Practical Point, the policy must be looked at, and our reasons for the answer there given appear in the answer.

We should have thought that the natural inference to be drawn from the inclusion in the policy of an exception permitting the towing of a broken-down vehicle (which is, while being so towed, a trailer) is that the towing of other trailers was not permitted by the policy, but on the facts stated in the present question and having regard to *Carnill* v. *Rowland, supra*, it may be that a court would not convict of an offence against s. 35 in this case.

14.—Town and Country Planning—*Permission—Validity of condition—Statement of reasons.*

Application is made by the planning authority for an entry in Part III (*c*) of the register of local land charges as respects a restriction imposed by the authority under s. 14 of the Town and Country Planning Act, 1947. A typical restriction is that a building shall be set back a specified distance from the centre line of the highway. This condition is incorporated in the permission, which said permission recites the reason for the restriction thus: "As required by the county council as highway authority." The words in parenthesis do not seem to be a reason for the council's decision and can hardly give an appellant grounds on which he may rebut the basis of the restriction.

In your opinion (1) do the words quoted constitute a reason for the restriction? (2) If not, is the restriction invalidated? I have referred to s. 14 of the Town and Country Planning Act, 1947; art. 5 (9) (*a*) of the Town and Country Planning General Development Order and Development Charge Applications Regulations, 1950, S.I. 1950, No. 728 and to *London County Council* v. *Marks & Spencer Ltd. and Others* [1953] 1 All E.R. 1095; 117 J.P. 261. APU.

Answer.

Section 14 of the Act of 1947 does not use the word "restriction," which occurs in this query. Permission can be refused, or it can be granted on conditions. The query tells us that permission has been granted subject to the restriction (more properly the condition) that the building shall be set back to a "specified distance." If this is correct, *i.e.*, if in truth the distance is "specified," this is a good condition. It would in our opinion be bad for uncertainty (P.P. 8 at p. 504, *ante*) if the condition were expressed as being that the building be set back "as required by the highway authority"—that is to say, to such extent as shall hereafter be required by the highway authority, and not to a distance specified in the condition.

The obligation to state a reason is enacted by art. 5 (9) (*a*) of the cited Order, not by the Act, and this differentiates the case from *L.C.C.* v. *Marks & Spencer, supra*, where the Act in question (s. 10 of the Town and Country Planning Act, 1932) said that permission given conditionally was deemed to be granted unconditionally unless a reason was given. Looking, however, to ss. 16 (3) and 111 of the Act of 1947, it seems that failure to comply with the obligation created by the Order is enough to invalidate a condition, and accordingly to make the conditional permission tantamount to the giving of no decision at all, so letting in a right of appeal—this being a further difference from the older law applied in *L.C.C.* v. *Marks & Spencer, supra*. On the assumption we have made about the facts here, this question does not really arise, because the words introduced by "As required" in the notice do constitute a reason of a sort. It is as if the council said "Because this is desired by the highway authority." Whether the reason is adequate is another question.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*contd.*)

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APPLICATIONS are invited for the appointment of Assistant Solicitor at a salary in accordance with Grade A.P.T. VIII (£760, rising by annual increments of £25 to £835) of the National Salaries Scales, plus £30 London Weighting allowance.

The appointment will be subject to a medical examination and to the provisions of the Local Government Superannuation Acts.

Applications, stating age, full particulars of experience, and the names of three persons to whom reference may be made, endorsed "Assistant Solicitor," must reach me not later than October 19, 1953.

Canvassing in any form will be a disqualification.

D. J. OSBORNE,
Town Clerk.

Town Hall,
Leyton,
Essex.

Amended Advertisement

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Deputy Town Clerk

APPLICATIONS are invited from Solicitors and other suitably qualified persons for the appointment of Deputy Town Clerk at a salary according to Grade VII of the A.P.T. Division. Housing accommodation will be available if required. Particulars should be obtained from the undersigned as soon as possible, and applications submitted not later than October 13, 1953.

Applicants who answered the original advertisement should indicate by letter whether they wish their applications to stand.

ERNEST BAILEY,
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The Municipal Offices,
Lairgate,
Beverley,
E. Yorks.

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APPLICATIONS are invited for the above appointment. Salary Grade IX (£815–£935). Local Government experience essential.

Successful candidate will be required to pass a medical examination.

Applications to be sent to undersigned with copies of two recent testimonials not later than October 17, 1953.

F. D. LITTLEWOOD,
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Cheltenham.

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The appointment is subject to the National Scheme of Conditions of Service and the Local Government Superannuation Acts, medical examination, and one month's notice on either side.

Applications, stating age, education, experience and qualifications, together with names of two persons to whom reference may be made, should be sent not later than October 26, 1953, to

F. R. APPLEBY,
Clerk of the Council.

Council Offices,
Lyndhurst,
Hants.
September 28, 1953.

COUNTY BOROUGH OF BRIGHTON

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APPLICATIONS are invited from Solicitors with considerable Local Government experience for the appointment of Deputy Town Clerk at a salary of £1,750×£50—£2,000.

Particulars of appointment and application forms, which must be returned not later than October 24, 1953, may be obtained from the Town Clerk, Town Hall, Brighton. Canvassing will disqualify.

NOTTINGHAMSHIRE MAGISTRATES' COURTS COMMITTEE

Appointment of Second Assistants to the Clerks to the Justices for:

(*a*) The Borough of Mansfield and Petty Sessional Division of Mansfield; and

(*b*) The Borough of Newark and Petty Sessional Divisions of Newark and Southwell

APPLICATIONS are invited for the above full-time appointments from persons with knowledge of Magisterial law and procedure and preferably with recent experience in a Magistrates' Clerk's Office. The salary will be in accordance with Grade IV of the A.P.T. Division of the Joint Council Scale, namely £555×£15 to £600 per annum (commencing, according to experience, at a point within this Grade) and will be subject to review in the event of a salary award or agreed recommendations being subsequently formulated by any joint negotiating body set up for the purpose of reviewing the salaries of Justices' Clerks' Assistants. The appointments, which are superannuable, will be subject to one month's notice on either side, and the successful candidates will be required to pass a medical examination.

Applications, stating age, experience and the post applied for, together with the names and addresses of two persons to whom reference may be made, should reach my Office not later than October 19, 1953.

K. TWEEDALE MEABY,
Clerk of the Magistrates' Courts Committee.

Shire Hall,
Nottingham.

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Appointment of Town Clerk and Solicitor

APPLICATIONS are invited from persons with a wide and varied administrative experience for the appointment of Town Clerk and Solicitor. Qualification as a solicitor is essential.

Salary, £3,000 p.a. rising by two annual increments of £100 and one of £50 to £3,250 p.a., inclusive of all fees.

Particulars and conditions of appointment and form of application from Acting Town Clerk, Lambeth Town Hall, Brixton Hill, S.W.2. Closing date: October 23, 1953.

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